

GV

Phone: 1300 362 829
Email: foi@tpb.gov.au
Website: www.tpb.gov.au

14 August 2024

By email only: foi+request-11690-5fd0b951@righttoknow.org.au

Dear GV,

Your freedom of information request to the Tax Practitioners Board

1. I refer to your request under the *Freedom of Information Act 1982 (FOI Act)* to the Tax Practitioners Board (**the Board**) on 15 July 2024 (**FOI request**).
2. On 15 July 2024, you specifically requested access to

“...minutes of meetings, briefs, and file notes relevant to the following matters related to the Tax Agent Services (Code of Professional Conduct) Determination 2024:

- 1) *The decision to not conduct consultations with professional bodies in the accounting and tax industries;*
- 2) *Consultations with the TPB by Minister Jones (or his office) in respect of the determination;*
- 3) *Impact of the determination on the tax industry in Australia;*
- 4) *Guidance products to be prepared for tax agents bound by changes to the Code of Professional Conduct.”*

3. I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents. My decision and the reasons for that decision are outlined below.

Decision

4. The Board has conducted a search of its records for documents which fall within the scope of your request.
5. I have decided, pursuant to section 11A of the FOI Act, to grant you access to part of the documents requested, specifically those that are characterised by the fourth category of your FOI request.
6. Access to those documents has been deferred under section 21 of the FOI Act. The complete schedule of documents considered under this FOI request will be

provided to you, along with copies of the documents to which access has been granted, at a later date in time, in accordance with my reasoning below.

7. I also note that some documents within the scope of your FOI request could not be found or do not exist. The Board was unable to locate any documents which would fall within categories one, two or three of your FOI request. Therefore, I refuse access to those documents to the extent that section 24A of the FOI Act applies.
8. In making my decision, I referred to the following:
 - a. the terms of your FOI request;
 - b. the content of the identified documents that fall within the scope of your FOI request;
 - c. the relevant provisions of the FOI Act;
 - d. the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
 - e. the relevant provisions of the *Tax Agent Services Act 2009* (**TASA**).
9. The reasons for my decision are set out below.

Reasons for decision

Section 21 – Deferment of access

10. Section 21 of the FOI Act states:

- (1) *An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:*
 - (a) *if the publication of the document concerned is required by law until the expiration of the period within which the document is required to be published; or*
 - (b) *if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available until the expiration of a reasonable period after its preparation for it to be so presented or made available; or*
 - (c) *if the premature release of the document concerned would be contrary to the public interest until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or*
 - (d) *if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public until the expiration of 5 sitting days of either House of the Parliament.*
- (2) *Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.*

11. Under category four of your FOI request, you have requested access to “minutes of meetings, briefs, and file notes relevant to... [g]uidance products to be prepared for tax agents bound by changes to the Code of Professional Conduct”.
12. Although I grant access to those documents under section 11A of the FOI Act, I consider it necessary to defer access to those documents pursuant to paragraph 21(1)(c) of the FOI Act, by reason that their release would be contrary to the public interest at this time.

Public interest

13. The Board has a critical role in protecting consumers by regulating the provision of tax agent services within Australia. In addition to its investigative and enforcement functions, the Board, on behalf of the Government, publishes official guidance on the interpretation and operation of the *Tax Agent Services Act 2009 (TASA)*, and legislative instruments formed under the TASA.
14. The Ministerial power under section 30-12 of the TASA has been used for the first time to publish the Tax Agent Services (Code of Professional Conduct) Determination 2024 (the Determination).¹
15. The Board is currently in the process of drafting guidance documents in relation to the Determination.² Commencing from early August, the Board will be seeking public consultation on the Board’s draft guidance for specific provisions within the Determination. The public consultation process is expected to finalise in early October, with all guidance products being released in early November.
16. To date, there has been significant public interest in the Determination, and this will continue through the public consultation process for the Board’s draft guidance in relation to the Determination. Given the importance of the Board’s guidance in interpreting and applying the TASA and other legislative instruments, it is critical that the process of receiving feedback for the drafting of that guidance is properly and fairly managed. This ensures that the Board’s guidance materials are consistent and reliable.
17. Therefore, I consider that the release of documents at this time under this FOI request is contrary to the public interest in that it would likely interfere with the proper and orderly conduct of genuine public participation in the publicly available consultation process currently underway for the draft guidance products.
18. Accordingly, it is my decision to defer the release of the documents until after the occurrence of an event, beyond which the release of the documents would no longer be contrary to the public interest.

Period of deferment

19. The release of the documents is deferred until after the publication of all guidance products in relation to the Determination, this being the event referred to above in paragraph 18.

¹ TPB Media Release on the use of the Ministerial power to publish the Determination: <https://www.tpb.gov.au/new-code-determination-lifts-professional-standards-tax-practitioners>.

² TPB Communique on the Tax Practitioner Governance and Standards Forum and Consultative Forum: <https://www.tpb.gov.au/tax-practitioner-governance-and-standards-forum-and-consultative-forum-24-july-2024>.

Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received

20. A thorough and comprehensive search of the Board's records was undertaken to locate documents that fall within each of the four specified categories of documents that you refer to in your FOI request.

21. Section 24A(1) of the FOI Act states:

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

22. I am satisfied that all reasonable steps have been taken to find other documents that would fall within categories one, two and three of your FOI request, and that those documents cannot be found or do not exist.

23. Accordingly, I must refuse your request for access to those documents in accordance with subsection 24A(1) of the FOI Act.

Your review rights

24. Please refer to the **enclosed** 'Notice of Rights of Review' for further information about your review rights in relation to this decision regarding your FOI request.

Further assistance and information

25. Please note that under section 70-35 of the TASA, the Board is not obliged to disclose official information to a court.

26. If you have any queries in relation to this decision, please do not hesitate to contact the Board's Legal Unit by email at foi@tpb.gov.au.

Yours sincerely,

Legal Officer
Tax Practitioners Board

Encl:

1. Notice of Rights of Review

Tax Practitioners Board Decision

Notice of Rights of Review

Your review rights commence from receipt of this decision.

Internal Review

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), you may apply for an internal review of this decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review, although it will assist your case to set out in the application, the grounds on which you believe that the original decision should be overturned.

An application for an internal review of a decision can be sent by email to foi@tpb.gov.au or by post to:

FOI Coordinator
Tax Practitioners Board
Legal Unit
GPO Box 1620
SYDNEY NSW 2001

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

External Review by the Australian Information Commissioner

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Information Commissioner's website at www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commissioner at:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Professional Practice Committee Meeting Minutes

OFFICIAL Internal
File ref: C4M 2024-1

Title:	Professional Practice Committee Meeting (2024-1)		
Issue date:	16 April 2024		
Venue:	Telepresence room 23.713 at [REDACTED] Sydney Office, Microsoft Teams		
Event date:	6 February 2024	Start: 2:35pm AEDT	Finish: 4:02pm AEDT

Chair:	Kerrie Sadiq	Facilitator:	N/A
Contact	[REDACTED]	Contact phone:	[REDACTED]

Attendees:	Members	TPB staff
	<ul style="list-style-type: none"> • Kerrie Sadiq (Chair) • Debra Anderson • Andrew Conway • Peter de Cure 	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Apologies: N/A

Next meeting TBC

1.1 Meeting opening and apologies

The Chair welcomed all attendees and noted no apologies for the meeting.

The Chair also acknowledged the attendance of Peter de Cure, Chair of the Tax Practitioners Board (TPB), at the meeting.

1.2 Conflict of interest disclosures

The Committee members confirmed there were no additional new declarations of interest since the previous meeting.

Having regard to the agenda and the attendance of a new Committee member, Kerrie Sadiq, the Committee members noted the following declarations:

- Kerrie Sadiq is a voting member of the Tax Institute (TTI), Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia, as well as a member of the Australian Institute of Company Directors (AICD) and the Australasian Tax Teachers Association (ATTA).
- Debra Anderson is a voting member of TTI and the Institute of Public Accountants (IPA), a member of the Australian Securities and Investments Commission's (ASIC) Financial Services and Credit Panel, and a registered tax practitioner.
- Andrew Conway is the Chief Executive Officer (CEO) of IPA.
- Peter de Cure is a voting member of CA ANZ and a member of AICD.

1.3 Matters for other business

No matters for other business were raised.

1.4 Approval of previous Committee meeting minutes

The Committee considered and approved the draft minutes from the previous Committee meeting held on 17 February 2023 without modification (**Attachment 1.4 of the February meeting agenda papers**).

1.5 Action items

The Committee noted the updates provided in relation to the action items (**Attachment 1.5 of the February meeting agenda papers**).

- In relation to action item 02.2b/20221214, the Committee noted that this matter is tabled for discussion at Agenda Item 2.3. Given this item has now been incorporated within the Committee's Work Program and updates will be provided to the Committee as appropriate, the Committee agreed to close this action item.
- In relation to action item 04.1a/20221214, the Committee was advised that due to team priorities, this item has been reallocated within the team and is currently in progress. Noting that this item has now also been incorporated within the Committee's Work Program and updates will be provided to the Committee as appropriate, the Committee agreed to close this action item.
- In relation to action item 04.2a/20221214, the Committee was advised that given the significant reform agenda underway for the TPB, it would be appropriate to add this item to the Committee's Work Program and revisit it in due course. The Committee agreed that this action item would be more appropriately monitored within the Committee's Work Program and consequently agreed to close this action item.

- In relation to action item 02.1a/20230217, the Committee was advised that this action item is now complete, noting that updated copies of the draft Code Item 15 and 16 Information Sheets were provided to the Committee out-of-session.
- In relation to action item 02.1b/20230217, the Committee was advised that this action item is now complete, noting that the Committee's out-of-session comments in relation to the draft Code Item 15 and 16 Information Sheets were considered and incorporated within the Information Sheets as appropriate. The Committee was also advised that the updated draft Information Sheets were provided to the Chair of the Committee out-of-session for final endorsement.
- In relation to action item 02.1c/20230217, the Committee was advised that this action item is now complete. It was noted that the draft Code Item 15 and 16 Information Sheets were published for public consultation following the combined Consultative Forum (CF) and Tax Practitioner Governance and Standards Forum (TPGSF) meeting of 15 December 2023. Public consultation closes on 16 February 2024.
- In relation to action item 02.2a/20230217, the Committee was advised that this action item is now complete. It was noted that amendments were made to *TPB(EP) 07/2021 Continuing professional education requirements for tax and BAS agents from 1 July 2022* to clarify that registered tax practitioners may elect for their continuing professional education (CPE) period to align with the CPE period of their recognised professional association, with the updated TPB(EP) published on 23 May 2023.
- In relation to action item 2.2b/20230217, the Committee was advised that this action item is now complete. It was noted that website guidance has been published on the TPB's website in relation to how tax practitioners make an election in relation to their CPE period.

Agenda item: 02/20240206 – Matters for decision

2.1 Consideration of new draft information sheet on breach reporting requirements for registered tax practitioners

The Committee considered new draft Information Sheet TPB(I) DX/2024 *Breach reporting under the Tax Agent Services Act 2009* (draft information sheet) (**Attachment 2.1A of the February meeting agenda papers**) which provides guidance to support the new breach reporting obligations under the *Tax Agent Services Act 2009* (TASA) that will apply from 1 July 2024.

The Committee was provided with an overview of the new breach reporting requirements and the purposes of the TPB's Information Sheet, which is to assist registered tax practitioners to understand the new breach reporting obligations under sections 30-35 and 30-40 of the TASA.

The Committee provided the following general feedback in relation to the draft information sheet:

- The draft information sheet should be reviewed to ensure it is meeting its intended purpose of assisting the tax practitioner community to understand their obligations under the new breach reporting framework and providing the practical guidance necessary to achieve that purpose.
- The draft Information sheet should be accompanied by additional guidance material, such as a flow chart/diagram and/or factsheet, to provide a summary of the obligations and to assist tax practitioners with navigating the new breach reporting obligations and ensuring they understand what is expected of them.

- A large portion of the draft information sheet is focused on defining specific terms introduced by the new breach reporting legislation. The Committee suggested exploring the addition of a glossary or definitions section to summarise these definitions in a more concise manner to assist tax practitioners in understanding the terminology used throughout the draft information sheet.
- The draft information sheet is silent on how the recognised professional associations (RPAs) can meet their obligations under the breach reporting framework where they are also a registered tax practitioner, although it was noted that this matter has already been raised with Treasury and the TPB is awaiting clarification.

The Committee provided the following specific feedback in relation to the draft information sheet:

- The draft information sheet should be reviewed to ensure that references to breaches are references to 'actual' breaches and not 'possible' breaches.
- The draft information sheet does not adequately address the consequences for tax practitioners making vexatious breach reports. The inclusion of a paragraph addressing this scenario, as well as a practical example, would assist in addressing this concern.
- The guidance in relation to paragraph 90-1(1)(a) of the TASA concerning indictable offences, or offences involving dishonesty, should be reviewed to ensure the draft information sheet provides tax practitioners with practical guidance on how best to determine whether a breach is considered 'significant' for the purposes of this paragraph. A tax practitioner will not necessarily have the legal knowledge and expertise to know if the conduct gives rise to an offence. The Committee suggested the inclusion of specific examples covering the most common forms of offences which tax practitioners may commit would address this, particularly noting that tax practitioners are unlikely to seek independent legal advice given the costs involved.
- The guidance in relation to paragraph 90-1(1)(b) of the TASA concerning material loss or damage to another entity should be updated to include additional examples, such as loss or damage in the form of adverse impacts to the mental health of clients as a result of the tax practitioner's conduct (for example, resulting from the commencement of an ATO audit).
- The draft information sheet should remind tax practitioners to review their professional indemnity insurance to ensure that there is an appropriate level of cover for events captured by the new breach reporting requirements.

The Committee agreed to approve the draft information sheet, subject to the following action being taken before commencing the formal consultation process with the Consultative Forum (CF) and Tax Practitioners Governance and Standards Forum (TPGSF):

- The draft information sheet be updated to address the specific observations noted above, with a final review to be undertaken by the Chair of the Committee before proceeding to consultation, and
- Accompanying guidance material be drafted for the CF and TPGSF's consideration at an upcoming out-of-session meeting to be held before the formal consultation process commences.

The changes to the draft information sheet, and accompanying guidance, are to be endorsed by the Chair out-of-session prior to consulting with CF and TPGSF members.

The Committee was advised that following consultation with the CF and TPGSF, feedback and comments received will be compiled and incorporated into the draft Information Sheet for the Committee's consideration and endorsement at a subsequent Committee meeting.

2.2 Review of continuing professional education period in light of upcoming commencement of annual registration

The Committee considered a briefing paper addressing the question of whether to maintain the TPB's current continuing professional education (CPE) policy in light of the upcoming commencement of annual registrations on 1 July 2024 (**Attachment 2.2A of the February meeting agenda papers**).

The Committee also considered a minor amendment to TPB Explanatory Papers TPB(EP) 07/2021 *Continuing professional education requirements for tax and BAS agents from 1 July 2022* and TPB(EP) 08/2022 *Continuing professional education policy requirements for tax agents with a tax (financial) advice services condition* (**Attachment 2.2A of the February meeting agenda papers**) which seek to clarify the TPB's position in relation to the number of CPE hours to be completed by part-time tax practitioners.

The Committee noted the recommendation that the current three-year CPE period and the minimum number of hours required to be completed each year be retained in the short-term, with a recommendation that this policy be reviewed twelve months after the commencement of annual registration as part of the TPB's post-implementation review of the broader CPE policy.

The Committee also noted the suggested amendment to the TPB Explanatory Papers to highlight the TPB's position in relation to the number of CPE hours to be completed by part-time practitioners.

The Committee agreed with the recommendation concerning retention of the TPB's current CPE policy in the short-term, but noted that there is a need for a broader review of the TPB's CPE policy, particularly in regard to the following components of the policy:

- the minimum yearly requirement which currently does not align with the industry standard of 40 hours, and
- lack of guidance in relation to specific topics to be covered, with it noted that other regulators mandate topics (such as ethics).

The Committee requested that a broader review be undertaken once annual registration commences on 1 July 2024 and agreed that an appropriate time for the commencement of such a review would be 12 months after the commencement of annual registrations. The Committee requested that in the interim, a briefing paper setting out a proposal in relation to a future review of the TPB's CPE policy, be prepared for consideration at the next Committee meeting.

The Committee also agreed to the suggested amendment to the TPB's Explanatory Papers to note that the TPB's position is that tax practitioners who work part-time must complete the minimum number of CPE hours, noting that the level of knowledge and skills required of part-time practitioners is the same as those working full-time hours.

2.3 Consideration of draft website guidance for registered tax practitioners on their role in providing other services in relation to State or Territory tax laws

The Committee considered the draft website guidance which seeks to provide guidance to registered tax practitioners on their role in providing other services in relation to State or Territory taxation laws (**Attachment 2.3A of the February meeting agenda papers**).

The Committee approved the draft website guidance, without amendment, to be published on the TPB's website.

Action item: 02.1a/20240206	Due date: Next PPC meeting	Responsibility: Policy and Legislation ██████████ ██████████
<p>P&L is to update draft TPB Information Sheet TPB(I) DX/2024 <i>Breach reporting under the Tax Agent Services Act 2009</i> in accordance with the Committee's resolutions and, subject to the Chair's out-of-session endorsement of the changes, undertake a 28-day consultation with the Consultative Forum and Tax Practitioner Governance and Standards Forum.</p>		
Action item: 02.1b/20240206	Due date: Next PPC meeting	Responsibility: Policy and Legislation ██████████ ██████████
<p>P&L is to draft additional guidance material to accompany draft TPB Information Sheet TPB(I) DX/2024 <i>Breach reporting under the Tax Agent Services Act 2009</i> and, subject to the Chair's out-of-session endorsement of those materials, undertake a 28-day consultation with the Consultative Forum and Tax Practitioner Governance and Standards Forum.</p>		
Action item: 02.2a/20240206	Due date: TBC, noting that this will form part of the post-implementation review of the TPB's CPE policy which is now due to commence on July 2025 in light of annual registration commencing on July 2024	Responsibility: Policy and Legislation ██████████
<p>P&L is to prepare a briefing paper setting out the TPB's proposed review of its continuing professional education requirements for consideration at a future Committee meeting.</p>		
Action item: 02.2b/20240206	Due date: 1 March 2024	Responsibility: Policy and Legislation ██████████
<p>P&L is to liaise with the Communications team to update the TPB's communications regarding annual registration to note that while there are no changes to the TPB's CPE policy, the policy will be subject to a review following commencement of annual registrations.</p>		

Action item: 02.2c/20240206	Due date: 1 March 2024	Responsibility: Policy and Legislation [REDACTED]
P&L is to finalise the amendment to TPB Explanatory Papers TPB(EP) 07/2021 <i>Continuing professional education requirements for tax and BAS agents from 1 July 2022</i> and TPB(EP) 08/2022 <i>Continuing professional education requirements for tax agents with a tax (financial) advice services condition</i> , with copies to be provided to the Communications team for the purposes of a style review and publication on the TPB's website.		
Action item: 02.3a/20240206	Due date: 1 March 2024	Responsibility: Policy and Legislation [REDACTED]
P&L is to provide the Communications team with a final copy of the draft website guidance (regarding the role of registered tax practitioners in providing other services in relation to State or Territory tax laws) for the purposes of a style review and publication on the TPB's website.		

Agenda item: 03/20240206 – Matters for noting

3.1 Key learnings from the TPB Biannual Survey of tax practitioners

The Committee noted the update provided on key learnings from the TPB's 7th Biannual Survey of tax practitioners, noting the key themes raised from the survey results in relation to the TPB's guidance material. The next TPB Biannual Survey will most likely be held in April 2024.

3.2 Professional Practice Committee Work Program

The Committee noted the Professional Practice Committee (PPC) Work Program (**Attachment 3.2A of the February meeting agenda papers**).

In particular, the Committee's attention was drawn to the addition of the proposed new obligations under *Tax Agent Services (Code of Professional Conduct) Determination 2023*. It was further noted that the proposed CPE review would be added to the Work Program in due course.

Agenda item: 04/20240206 – Other business

4.1 Items raised as other business

No items of other business were raised.

5.1 Next meeting

It was noted that the date for the next Professional Practice Committee meeting will be confirmed in due course.

5.2 Additional reading time

No additional reading time was required.

5.3 Close of meeting

The meeting closed at 4:02pm AEDT.

Professional Practice Committee Meeting Minutes

OFFICIAL Internal
File ref: C4M 2024-2

Title:	Professional Practice Committee Meeting (2024-2)		
Issue date:	21 May 2024		
Venue:	Telepresence room 23.713 at [REDACTED] Sydney Office, Microsoft Teams		
Event date:	16 April 2024	Start: 1:32pm AEST	Finish: 3:51pm AESTU

Chair:	Kerrie Sadiq	Facilitator:	N/A
Contact	[REDACTED]	Contact phone:	[REDACTED]

Attendees:	Members	TPB staff
	<ul style="list-style-type: none"> • Kerrie Sadiq (Chair) • Debra Anderson • Andrew Conway • Peter de Cure 	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Apologies: N/A

Next meeting 21 May 2024

Agenda item: 01/20240416 – Meeting opening

1.1 Meeting opening and apologies

The Chair welcomed all attendees and noted no apologies for the meeting.

The Chair also acknowledged the attendance of Peter de Cure, Chair of the Tax Practitioners Board (TPB), at the meeting.

1.2 Conflict of interest disclosures

The Committee members confirmed there were no additional new declarations of interest since the previous meeting.

Having regard to the agenda, the Committee members noted the following declarations:

- Kerrie Sadiq is a voting member of the Tax Institute (TTI), Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia, as well as a member of the Australian Institute of Company Directors (AICD) and the Australasian Tax Teachers Association (ATTA).
- Debra Anderson is a voting member of TTI and the Institute of Public Accountants (IPA), a member of the Australian Securities and Investments Commission's (ASIC) Financial Services and Credit Panel, and a registered tax practitioner.
- Andrew Conway is the Chief Executive Officer (CEO) of IPA.
- Peter de Cure is a voting member of CA ANZ and a member of AICD.

Having regard to the disclosures above, it was noted that Committee member, Andrew Conway, would not be participating in Agenda Items 2.2 and 2.4 of the meeting.

1.3 Matters for other business

One matter for other business was raised in relation to a status update on the progress of the D2 Draft Information Sheet relating to the breach reporting requirements.

1.4 Approval of previous Committee meeting minutes

The Committee considered and approved the draft minutes from the previous Committee meeting held on 6 February 2024, with one minor modification to address a typo (**Attachment 1.4 of the April meeting agenda papers**).

1.5 Action items

The Committee took as read the updates on the action items provided in **Attachment 1.5 of the April meeting agenda papers**, noting that a verbal update would be provided at Agenda Item 4.1 in relation to D2 Draft Information Sheet relating to the breach reporting requirements.

Agenda item: 02/20240416 – Matters for decision

2.1 Committee Governance

The Committee noted the overview of the proposed governance arrangements for PPC meetings in 2024 by way of PowerPoint presentation in **Attachment 2.1A of the April meeting agenda papers**. The presentation covered:

- Guiding principles,

- Standard process and timeline to develop guidance products,
- Key stages for PPC and Board Consideration, and
- Proposed 2024 PPC Meeting Schedule (including immediate term work program).

The Committee agreed to approve the PPC meeting schedule for 2024, noting that commencement of consultation on the draft information sheets relating to the Exposure Draft Tax Agent Services (Code of Professional Conduct) Determination 2024 (the Code Determination) is subject to finalisation of the Code Determination by Government. The Committee further suggested that the TPB consider an appropriate communications strategy to inform registered tax practitioners in due course of the TPB's plan to run public consultation processes on its proposed new information products throughout 2024.

The Committee also considered a revised Committee Charter (**Attachment 2.1A of the April meeting agenda papers; Handout 1**) including proposed changes to the Charter. The Committee agreed to approve the revised Committee Charter, with no further amendments. It was noted that copies of both approved documents would be circulated with the Board for noting.

2.2 Consideration of public consultation submissions in relation to D3 Exposure Draft Information Sheets on Code Items 15 and 16

The Committee considered the briefing paper in **Attachment 2.2A of the April meeting agenda papers**, the purpose of which is to:

- provide a summary of submissions and feedback received regarding the recent public consultation for Exposure Draft Information Sheets relating to Code Items 15 (D51) and 16 (D52) (**Appendix A – Compendium of submissions and other feedback in the April meeting agenda papers**), and
- seek the Committee's feedback and input in relation to proposed tracked changes made to D51 (**Appendix B**) and D52 (**Appendix C**), resulting from the submissions and feedback.

The Committee noted the submissions and feedback from the public consultation process, and provided the following suggestions, feedback and enhancements to D51 and D52:

- Minor amendments to Examples 4, 5 and 6 in D51 to correct errors and improve readability.
- Further refinement of the examples in D51 and D52 more broadly to remove unnecessary details and improve readability.
- Amendments to Table 2 in D51 to include updating contractual requirements in the steps a tax practitioner needs to take before employing or using an entity to provide tax agent services on their behalf.
- Amendments to paragraphs 49 to 51 of D51 to include a practical example of where there are barriers to a tax practitioner immediately taking action to comply with the requirements of Code Item 15.
- Simplify paragraphs 15 to 19 of D51 explaining when an entity is required to be under a tax practitioner's supervision and control, including with respect to outsourcing and offshoring arrangements, and the use of a contracted entity (i.e. a company).

The Committee agreed to approve D51 and D52, subject to the Committee's suggestions, feedback and enhancements to the information sheets.

Once updated with the Committee's suggested amendments, the D3 Exposure Draft Information Sheets are to be sent to the PPC Chair for out-of-session approval to finalise and publish. Subject to this approval, the Board's final endorsement will be sought out-of-session for publication on the TPB's website. Publication of the guidance will be supported with relevant communication activities.

In addition, the Committee requested that new website content be prepared regarding Code Items 15 and 16 as frequently asked questions on the TPB's website to further support the new information sheets.

2.3 Proposed TPB Information products for the Code Determination

The Committee considered the briefing paper in **Attachment 2.3A of the April meeting agenda papers**, the purpose of which is to:

- provide an update on the Code Determination, and
- seek the Committee's approval of a plan to draft and develop proposed TPB information products, which are being developed to provide guidance to tax practitioners on the proposed additional obligations under the Code Determination.

The Committee noted the plan in Table 1 of the briefing paper. In particular, it was noted that the rationale for combining guidance on the two proposed Code obligations listed at items 2 & 3 of Table 1 into one information sheet is because the TPB has existing products on the obligations regarding conflicts of interest and confidentiality for tax practitioners more broadly. However, as these Code items contain specific requirements relating to dealings with government and are not expected to apply to many tax practitioners, there was benefit in covering them together in one standalone document that would serve as a point of reference for that small select group of tax practitioners when dealing with the government. The Committee agreed with this approach.

The Committee agreed to approve the plan outlined in Table 1 to develop a suite of TPB information products (i.e. five new information sheets and new content for an existing information sheet) to support the potential commencement of eight proposed additional obligations under Code Item 17. This is intended to provide support to registered tax practitioners with understanding their additional obligations. P&L is to ensure that the approved plan for developing TPB information products for the proposed Code Item 17 obligations is included in the broader PPC Work Program.

The Committee broadly discussed the TPB's information product library and the various types of information products issued by the TPB on its website. The Committee requested that P&L undertake a review of the TPB's library of information products to identify opportunities to further simplify guidance for tax practitioners and present any proposed enhancements at the next Committee meeting.

2.4 Consideration of initial draft (D1) of Exposure Draft Information Sheet relating to section 15 of the Code Determination – false or misleading statements

The Committee considered the briefing paper in **Attachment 2.4A of the April meeting agenda papers**, the purpose of which is to seek:

- the Committee's feedback and approval of the first draft of *TPB(I) DX/2024 False or misleading statements to the TPB or Commissioner (Attachment 1 to the briefing paper)*, and
- the Committee's approval to provide the draft to TPB stakeholders, including the TPGSF and Consultative Forum, for under embargo consultation, before being released for public consultation.

The Committee noted that P&L has consulted with the TPB's Law & Compliance team in developing the D1 Information Sheet. P&L has also consulted with the Australian Taxation Office (ATO) and is currently awaiting their feedback, which will be incorporated once received. The Committee noted that the ATO's feedback is expected to provide additional examples (case studies) and is not expected to change the TPB's policy position. The guidance intends to include both TPB and ATO specific case studies.

The Committee supported the D1 Draft Information Sheet *TPB(I) DXX/2024 False or misleading statements to the TPB or Commissioner*, subject to the inclusion of the ATO's feedback. Once updated with these amendments, the revised information sheet is to be circulated with the PPC Chair for out-of-session approval and any consultation will be subject to the finalisation of the Code Determination.

2.5 Consideration of draft website guidance for registered tax practitioners on caretaker plans or arrangements in the event of becoming incapacitated and unable to run their practice

The Committee considered the briefing paper in **Attachment 2.5A of the April meeting agenda papers**, the purpose of which is to:

- provide an update on draft website guidance that has been developed for registered tax practitioners on making caretaker plans or arrangements in the event of becoming incapacitated and unable to run their practice, and
- seek the Committee's approval to finalise and publish the draft website guidance (**Attachment 1 to the briefing paper**) on the TPB's website.

The Committee noted the draft website guidance and provided feedback on Table 1 in the briefing paper, noting that any communication method may be appropriate for notifying clients of caretaker plans or arrangements. This is not limited to engagement letters. The Committee suggested that this be reflected in the website guidance to acknowledge any communication method may be appropriate, given engagement letters are not a mandatory requirement under the TASA.

The Committee agreed to approve the new website guidance for registered tax practitioners on making caretaker plans or arrangements in the event of becoming incapacitated and unable to run their business, subject to the inclusion of the Committee's feedback. This guidance will then be published on the TPB's website.

Action item: 02.1a/20240416	Due date: 30 June 2024	Responsibility: [REDACTED] Policy and Legislation and Communications
Consider an appropriate communications strategy to inform registered tax practitioners of the TPB's plan to run public consultation processes on its proposed new information products throughout 2024.		
Action item: 02.2a/20240416	Due date: 21 May 2024	Responsibility: Policy and Legislation [REDACTED]
Update D3 Draft Information Sheets TPB(I) D51/2023 and TPB(I) D52/2023 in accordance with the Committee's suggestions, feedback and enhancements. Once updated, P&L is to seek the PPC Chair's out-of-session approval to finalise for publication. Subject to this approval, the D4 information sheets are to be provided to the Board for out-of-session final endorsement to publish on the TPB's website.		

Action item: 02.2b/20240416	Due date: 21 May 2024	Responsibility: Policy and Legislation [REDACTED] and Communications
Prepare new website content about Code Items 15 and 16 (regarding disqualified entities) as frequently asked questions on the TPB's website.		
Action item: 02.3a/20240416	Due date: 21 May 2024	Responsibility: Policy and Legislation [REDACTED]
Reflect the approved plan for developing TPB information products for the proposed Code Item 17 obligations within the broader PPC Work Program.		
Action item: 02.3b/20240416	Due date: 21 May 2024	Responsibility: Policy and Legislation [REDACTED]
Consider whether the TPB's library for information products can be further simplified and present any proposed enhancements at the next Committee meeting.		
Action item: 02.4a/20240416	Due date: 1 May 2024	Responsibility: Policy and Legislation [REDACTED]
Update D1 Draft Information Sheet TPB(I) DXX/2024 <i>False or misleading statements to the TPB or Commissioner</i> to incorporate feedback from the Australian Taxation Office and then circulate the revised information sheet with the PPC Chair for out-of-session approval.		
Action item: 02.5a/20240416	Due date: 21 May 2024	Responsibility: Policy and Legislation [REDACTED]
P&L is to update the draft website guidance regarding incapacity of a tax practitioner, in accordance with the Committee's feedback, and then provide the Communications team with a final version of the website guidance for the purposes of a style review and publication on the TPB's website.		

Agenda item: 03/20240416 – Matters for noting

3.1 Broader Committee Work Program

The Committee noted the Professional Practice Committee (PPC) Work Program (**Attachment 3.2A of the April meeting agenda papers**), particularly the review of the TPB's information product library to further simplify guidance for tax practitioners. This review will be considered at the next PPC meeting on 21 May 2024.

Agenda item: 04/20240416 – Other business

4.1 Items raised as other business

The Committee noted an update on the D2 Draft Information Sheet relating to the breach reporting requirements. It is anticipated that a public consultation process will commence by the end of next week.

Agenda item: 05/20240416 – Meeting finalisation

5.1 Next meeting

It was noted that the next Professional Practice Committee meeting will be held on 21 May 2024.

5.2 Additional reading time

No additional reading time was required.

5.3 Close of meeting

The meeting closed at 3:51pm AEST.

Professional Practice Committee Meeting Minutes

OFFICIAL Internal
File ref: C4M 2024-3

Title:	Professional Practice Committee Meeting (2024-3)		
Issue date:	25 June 2024		
Venue:	Ewing Board room L9.716 at ATO Office, [REDACTED] Docklands Office, Microsoft Teams		
Event date:	21 May 2024	Start: 1:32pm AEST	Finish: 3:32pm AEST

Chair:	Kerrie Sadiq	Facilitator:	N/A
Contact	[REDACTED]	Contact phone:	[REDACTED]

Attendees:	Members	TPB staff
	<ul style="list-style-type: none"> • Kerrie Sadiq (Chair) • Debra Anderson • Andrew Conway • Peter de Cure 	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Apologies: [REDACTED]

Next meeting 25 June 2024

1.1 Meeting opening and apologies

The Committee Chair welcomed all attendees and noted [REDACTED] as an apology for the meeting.

The Committee Chair also acknowledged the attendance of Peter de Cure, Chair of the Tax Practitioners Board (TPB), at the meeting.

1.2 Conflict of interest disclosures

The TPB Chair confirmed that after discussion and consideration prior to the meeting, he was comfortable that Andrew Conway's conflicts of interest, particularly in respect of agenda items 2.1 and 2.2, could be appropriately managed. As such, it was confirmed that Andrew would participate in the consideration of those two agenda items, in addition to the rest of the matters included in the agenda, and the relevant papers were provided to Andrew.

The Committee members confirmed there were no additional new declarations of interest since the previous meeting.

1.3 Matters for other business

There were no matters for other business put forward by attendees.

1.4 Approval of previous Committee meeting minutes

The Committee considered and approved the draft minutes from the previous Committee meeting held on 16 April 2024 (**Attachment 1.4 of the May meeting agenda papers**).

1.5 Action items

The Committee took as read the updates on the action items provided in **Attachment 1.5 of the May meeting agenda papers**, and noted verbal updates in relation to:

- Action item 1: Policy and Legislation is working closely with Communications on a strategy to communicate the TPB's upcoming consultation processes on the new proposed information sheets to support the draft Code Determination. A further update in respect of this work will be provided to the Committee at the next meeting.
- Action item 7: The website guidance relating to incapacity of registered tax practitioners has now been published on the TPB's website. This action item is now complete.
- Action items 2 and 3: The two disqualified entities information sheets have been approved by the Committee Chair and are now undergoing a final Communications style review, before being provided to the Board for final endorsement. Once endorsed, the final information sheets will be published. Policy and Legislation are working with Communications in respect of additional guidance materials, news articles and webinars to support the finalised information products being published.
- Action item 6: The draft information sheet relating to making false and misleading statements to the TPB and Commissioner has now been updated to incorporate Australian Taxation Office (ATO) feedback and provided to the Committee Chair for approval. This action item is now complete.

2.1 Consideration of initial draft (D1) of Exposure Draft Information Sheet relating to sections 20 and 25 of the Code Determination – managing conflicts of interest and confidentiality in dealings with Government

The Committee considered the briefing paper and draft information sheet in **Attachment 2.1A of the May meeting agenda papers**.

The Committee resolved to approve the draft information sheet, subject to minor amendments, noting that Policy and Legislation are still waiting to receive feedback from the ATO.

The Committee also endorsed the recommended approach taken with drafting a single new information sheet to provide guidance in relation to sections 20 and 25 of the Code Determination, particularly noting that these requirements will only apply to a small number of registered tax practitioners.

Once ATO feedback has been considered, and Committee feedback has been incorporated, an updated draft version of the information sheet will be provided to the Committee Chair for out-of-session approval to commence consultation (subject to finalisation of the Code Determination instrument):

- under embargo with the TPB's Consultative Forum (CF) and Tax Practitioner Governance and Standards Forum (TPGSF), and
- for a 28-day public consultation period, with Committee Chair approval and subject to any red line issues identified through under embargo consultation.

It was noted that prior to consultation commencing in respect of the updated draft information sheet, this draft shall be provided to the Minister's Office for comment.

2.2 Consideration of updates and amendments to Information Sheet TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009 relating to sections 35 and 40 of the Code Determination – competence and quality management

The Committee considered the briefing paper and updated information sheet (TPB(I) 36/2021) in **Attachment 2.2A of the May meeting agenda papers** respectively.

The Committee resolved to approve the recommended updates and amendments to TPB(I) 36/2021, subject to the Committee's suggested amendments, particularly in respect of new Examples 5 and 6.

The Committee Chair requested that once updated to incorporate the Committee's suggested amendments, TPB(I) 36/2021 is to be circulated out-of-session to the Committee and the TPB Chair for approval to commence consultation (subject to finalisation of the Code Determination instrument):

- under embargo with the TPB's CF and TPGSF, and
- for a 28-day public consultation period, with Committee Chair approval and subject to any red line issues identified through under embargo consultation.

It was noted that prior to consultation commencing in respect of the updated TPB(I) 36/2021 (which reflects obligations contained in the Code Determination), this draft shall be provided to the Minister's Office for comment.

2.3 Review of the TPB's information product library

The Committee considered the discussion paper in **Attachment 2.3A of the May meeting agenda papers**.

The Committee resolved to endorse the proposed enhancements to the TPB's information product library to:

- reduce the TPB's nine categories of information products into just two formal categories that will support the TPB's registration and compliance activities (including litigation), consisting of information sheets and legislative instruments, and four informal categories will be retained; and
- create a new consultations page on the TPB's website which summarises, at a high level, the TPB's consultation process, submissions received, and actions taken in response to submissions.

Noting the significant volume of consultations to be released by the TPB over the next 12 months, the Committee noted that, subject to resourcing capability, the sooner that enhancements can be made to the TPB's consultations webpage and protocols, the better.

In terms of next steps, Policy and Legislation will seek feedback on the proposed enhancements from the TPB's CF.

Action item: 02.1/20240521	Due date: 3 September 2024	Responsibility: Policy and Legislation ██████████
Update D1 Information Sheet <i>TPB(I) DX/2024 Code of Professional Conduct - Maintaining independence and confidentiality in dealings with government</i> in accordance with the Committee's feedback. Once updated, P&L is to seek out-of-session approval from the Committee Chair. Following this approval (and subject to finalisation of the Code Determination instrument), this is to be provided to the TPB's CF and TPGSF for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).		
Action item: 02.2/20240521	Due date: 8 October 2024	Responsibility: Policy and Legislation ██████████
Update Information Sheet <i>TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009</i> in accordance with the Committee's feedback. Once updated, P&L is to seek out-of-session approval from the Committee members (including the TPB Chair). Following this approval (and subject to finalisation of the Code Determination instrument), this is to be provided to the TPB's CF and TPGSF for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).		
Action item: 02.3/20240521	Due date: 30 July 2024	Responsibility: Policy and Legislation ██████████
Seek feedback from the TPB's CF on the proposed new model for the TPB's information product library prior to implementation.		

Agenda item: 03/20240521 – Matters for noting

3.1 Broader Committee Work Program

The Committee noted the Professional Practice Committee (PPC) Work Program (**Attachment 3.1A of the May meeting agenda papers**).

Agenda item: 04/20240521 – Other business

4.1 Items raised as other business

There were no items for other business raised.

The Committee congratulated [REDACTED] on her recent well-deserved promotion to a Senior Policy and Legislation Adviser.

Agenda item: 05/20240521 – Meeting finalisation

5.1 Next meeting

It was noted that the next Professional Practice Committee meeting will be held on 25 June 2024.

5.2 Additional reading time

No additional reading time was required.

5.3 Close of meeting

The meeting closed at 3:32pm AEST.

Professional Practice Committee Meeting Minutes

OFFICIAL Internal
File ref: C4M 2024-4

Title: Professional Practice Committee Meeting (2024-4)	
Issue date: 30 July 2024	
Venue: Telepresence room L 14.06 at ATO Office, [REDACTED] Brisbane; Microsoft Teams	
Event date: 25 June 2024	Start: 1:36pm AEST Finish: 2:35pm AEST
Chair: Kerrie Sadiq	Facilitator: N/A
Contact: [REDACTED]	Contact phone: [REDACTED]
Attendees:	
<p>Members</p> <ul style="list-style-type: none"> • Kerrie Sadiq (Chair) • Debra Anderson • Andrew Conway 	<p>TPB staff</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Apologies: [REDACTED] and Peter de Cure (TPB Chair)	
Next meeting: 30 July 2024	

1.1 Meeting opening and apologies

The Committee Chair welcomed all attendees and noted [REDACTED] and Peter de Cure, Chair of the Tax Practitioners Board (TPB), as apologies for the meeting.

1.2 Conflict of interest disclosures

The Committee members confirmed there were no additional new declarations of interest since the previous meeting.

1.3 Matters for other business

There were no matters for other business put forward by attendees.

1.4 Approval of previous Committee meeting minutes

The Committee considered and approved the draft minutes from the previous Committee meeting held on 21 May 2024 (**Attachment 1.4 of the June meeting agenda papers**).

1.5 Action items

The Committee considered the updates on the action items provided in **Attachment 1.5 of the June meeting agenda papers**, in particular noting verbal updates in relation to:

- Action item 1:
 - Communications have completed their style review of the draft Information Sheet relating to the Draft Tax Agent Services (Code of Professional Conduct) Determination 2023 (the Draft Code Determination) items for maintaining independence and confidentiality in dealings with government. The draft Information Sheet is ready to be sent to the Minister's Office for comment, subject to finalisation of the Code Determination instrument and prior to commencing under embargo consultation with TPB forums.
- Action item 2:
 - Communications have completed their style review of the draft Information Sheet relating to the Draft Code Determination items for competence and quality management systems. The draft Information Sheet is ready to be sent to the Minister's Office for comment, subject to finalisation of the Code Determination instrument and prior to commencing under embargo consultation with TPB forums.
- Action Item 3:
 - The Committee noted that the Consultative Forum (CF) has not met since the previous Committee meeting. The briefing paper on the proposed new model for the TPB's information product library will be presented at the next CF meeting for consideration.
- Action item 4:
 - With regards to the communications strategy for the TPB Information Sheets and other guidance relating to the Draft Code Determination, the Committee noted the following:

- Policy and Legislation (P&L) have prepared a communications strategy for the Draft Code Determination, subject to consideration by the Minister, and
 - Draft Information Sheets will be provided to the CF, Tax Practitioner Governance and Standards Forum (TPGSF) and the public for consultation in stages, cognisant of the volume of legislative changes affecting tax practitioners and incorporating messaging regarding extensions of time to make submissions.
- The Committee suggested that P&L engage with Communications to explore options for a TPB 'Town Hall' forum, open to the public, to allow for 'Questions & Answers' in a less formal format as compared to current TPB webinars.
- Action item 5:
 - The Committee noted that following the Board's comments and endorsement, finalised Code Items 15 and 16 Information Sheets (TPB(I) 41/2024 and TPB(I) 42/2024) relating to disqualified entities were published on the TPB website on 12 June 2024.
- Action item 6:
 - The Committee noted that publication of the finalised Code Items 15 and 16 Information Sheets on 12 June 2024 was supported by two TPB news articles. Additional updates to TPB website content and a TPB webinar have been deferred to follow finalisation of the TPB Public Register enhancement regulations. This is expected to occur in early July 2024.
- Additional action item (01.5b/20240625):
 - The Committee provided feedback and suggested minor amendments in relation to the Committee briefing paper templates. These templates will be updated with the Committee's suggested amendments prior to the next meeting.

Action item: 01.5a/20240625	Due date: 3 September 2024	Responsibility: P&L [REDACTED] and Communications
With respect to the communications strategy for TPB Information Sheets and other guidance relating to the Draft Code Determination, P&L is to engage with Communications to explore options for a TPB 'Town Hall' forum, open to the public, to allow for 'Questions & Answers' in a less formal format as compared to current TPB webinars.		
Action item: 01.5b/20240625	Due date: 30 July 2024	Responsibility: P&L [REDACTED]
Update the Committee's briefing paper templates with the Committee's suggested minor amendment.		

2.1 Consideration of initial draft (D1) of Exposure Draft Information Sheet relating to section 30 of the Code Determination – keeping of proper client records

The Committee considered the briefing paper and draft information sheet in **Attachment 2.1A of the June meeting agenda papers**.

The Committee resolved to approve the draft information sheet, subject to the Committee’s amendments and feedback, including the following:

- in relation to paragraphs 52 to 64, the Committee suggested additional guidance (or cross-referencing to existing guidance) relating to a client’s right to access client records;
- in relation to paragraph 61, the Committee suggested clarifying that in certain circumstances there may be mandatory requirements to return, destroy or de-identify client records or information, under legislation other than the *Tax Agent Services Act 2009*;
- with regards to existing guidance and obligations relating to proof of identity (POI) and claiming liens over client property, the Committee suggested adding cross-references to this guidance within the draft information sheet;
- in relation to paragraph 19, specifically the words “*communications seeking review and approval/authority of documentation prior to lodgement with the ATO*”, the Committee suggested amendments to make clear that it is receipt of the client’s approval/authority and confirmation of their review of documentation, prior to lodgment with the ATO, which must be recorded by the tax practitioner; and
- in relation to paragraph 40, the Committee suggested adding an additional paragraph to clarify when a tax agent service is considered to have been provided and completed.

Subject to the Committee’s suggestions and amendments being incorporated, an updated draft version of the information sheet will be provided to the Committee Chair for out-of-session approval to commence consultation (subject to finalisation of the Code Determination instrument):

- under embargo with the TPB’s CF and TPGSF, and
- for a 28-day public consultation period, with Committee Chair approval and subject to any red line issues identified through under embargo consultation.

It was noted that prior to under embargo consultation commencing, the draft information sheet is to be provided to the Minister’s Office for comment.

Action item:	Due date:	Responsibility:
02.1/20240625	12 November 2024	P&L [REDACTED]
<p>Update D1 Information Sheet <i>TPB(I) DX/2024 Obligation to keep proper client records of tax agent services provided</i> in accordance with the Committee’s suggestions and amendments. Once updated, P&L is to seek out-of-session approval from the Committee Chair. Following this approval (and subject to finalisation of the Code Determination instrument), this is to be provided to the TPB’s Consultative Forum and Tax Practitioner Governance and Standards Forum for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).</p>		

Agenda item: 03/20240625 – Matters for noting

3.1 Broader Committee Work Program

The Committee noted the Professional Practice Committee (PPC) Work Program (**Attachment 3.1A of the June meeting agenda papers**).

In particular, the Committee noted that existing TPB guidance has been updated with regards to new legislation relating to the protection of whistleblowers, to be published on 1 July 2024 without requiring further consideration by the Committee.

Agenda item: 04/20240625 – Other business

4.1 Items raised as other business

There were no items for other business raised.

Agenda item: 05/20240625 – Meeting finalisation

5.1 Next meeting

It was noted that the next PPC meeting will be held on 30 July 2024.

5.2 Additional reading time

No additional reading time was required.

5.3 Close of meeting

The meeting closed at 2:35pm AEST.

[REDACTED]

From: [REDACTED]
Sent: Monday, 29 April 2024 2:25 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Summary - updates to Code Items 15 and 16 (disqualified entities) website content and TPB(I) 36/2021 discussion paper

Hi all,

Thank you for attending our discussion this afternoon regarding updates to website content for Code Items 15 and 16 (disqualified entities) and planning for consultation on amendments to [TPB\(I\) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009](#).

In summary, the following issues/updates were discussed:

- The Exposure Draft Information Sheets for Code Items 15 ([D51](#)) and 16 ([D52](#)) were considered by the PPC on 16 April 2024. These are currently being amended by P&L in accordance with PPC feedback and additional feedback received from CAANZ. The updated drafts will be provided to the PPC Chair and the Board (out of session) for final approval to publish. The PPC has requested that additional TPB website content be developed to assist practitioners to understand these obligations.
- Draft updates have been made to TPB(I) 36/2021 to provide guidance on two new items contained within the Code Determination. These items are on the agenda for the PPC to consider at their meeting on 21 May 2024. The TPB intends to have a public consultation period for these new updates.

We have agreed on the following action items arising from our discussion:

P&L

1. Once D51 and D52 have been finalised and approved for publication, P&L will provide these to Communications for final Comms review and draft amendments to [existing guidance](#) on the TPB website to match the amendments to D51 and D52. These amendments will include:
 - a. separating the guidance for Code Item 16 from the guidance for Code Item 15, which will appear on separate web pages; and
 - b. updating the existing [FAQs](#) with additional questions arising from the PPC's feedback.
2. Assist and review Communication's development of two 2-page PDF Factsheets explaining Code Items 15 and 16 respectively.
3. Prepare a brief Discussion Paper (DP), based on previous templates (i.e. [TPB\(DP\) D1/2020 TPB: CPE requirements for tax practitioners under the TASA](#)), which specifies the substantive amendments made to TPB(I) 36/2021 and seeks feedback from stakeholders on these items during public consultation. The DP will be considered by the PPC at their meeting on 21 May 2024.

Communications

4. With assistance from P&L, prepare two 2-page PDF Factsheets for Code Items 15 and 16 (separately) which will be housed on the TPB website for [Resources](#) and accessible via a prominent link within the existing TPB website guidance. These Factsheets will include diagrams to explain the steps tax practitioners need to take, similar those provided at Diagrams 3.1 and 3.2 (pages 34 and 35) of the [Explanatory Memorandum](#) to the *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023*.
5. Consider options for announcing the publication of finalised D51 and D52, two Factsheets and additional FAQs on the TPB website, using existing channels (eNews etc.).

6. Consider options for announcing the commencement of public consultation on amendments to TPB(I) 36/2021 and other guidance, to commence after PPC consideration of these draft amendments (scheduled for 21 May 2024) and publication of the final Code Determination (to be advised).

Please let me know if you have any questions, issues or if you would like to discuss these action items further.

Kind regards,

[Redacted]

[Redacted]

[Redacted] | Policy and Legislation

P [Redacted] E [Redacted]

-----Original Appointment-----

From: [Redacted]

Sent: Tuesday, April 23, 2024 7:12 PM

To: [Redacted]

Cc: [Redacted]

Subject: Updates to Code Items 15 and 16 (Disqualified Entities) website content and FAQs

When: Monday, 29 April 2024 1:00 PM-1:30 PM (UTC+10:00) Brisbane.

Where: Microsoft Teams Meeting

Update 24/04/2024 – Thank you all for accepting this meeting invitation. I've noted that the original invitation did not include an MS Teams link. Please use the **link added below** to attend the meeting on Monday.

Hi all,

Last week the Professional Practice Committee (PPC) approved updated Draft Information Sheets for [Code Items 15](#) and [16](#) relating to disqualified entities, subject to further amendments based on the PPC's feedback. These updated drafts are currently being finalised and will be provided out-of-session to the PPC Chair and the Board for final approval/endorsement before publication on the TPB website.

The PPC also requested that new website content be developed to accompany the final Information Sheets, including new content in the form of frequently asked questions (FAQs). The [existing TPB website content](#) for disqualified entities (including the current [FAQ page](#)) will also need to be updated to match some of the updated/new content in the Information Sheets.

I have arranged this meeting between Communications and P&L to discuss the options for additional content, how to coordinate these updates and the timing for publication. Please feel free to forward this invite to anyone else who may need to be part of that discussion.

If you have any questions or issues, including if this meeting time or date isn't suitable, please feel free to contact me via MS Teams to discuss.

[Redacted] – I note you are currently on leave, so I have just added you as an optional attendee for your visibility of this work once you return.

Kind regards,

[Redacted]

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Tenant key: [REDACTED]

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From: [REDACTED]
Sent: Wednesday, 3 July 2024 5:19 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Communications strategy for the Code Determination

Hi [REDACTED] and [REDACTED]

Thanks for catching up with me today to discuss the communications strategy for the Code Determination.

I noted the following action items from our meeting:

No.	Action item	Status
1	P&L is to send to Communications copies of the two information sheets for the proposed July release date for under embargo TPGSF and CF consultation.	Complete – emailed both today
2	Communications is to update the communications strategy with [REDACTED] table of proposed release dates and then develop a plan for appropriate dates to hold the under embargo TPGSF and CF consultation and public consultation rounds for each product.	In progress
3	Communications is developing a proposed plan for a ‘Town Hall/Questions at the Coalface’ session(s) on the Code Determination and will then seek comments from P&L on this proposal, prior to seeking [REDACTED] review of the proposal.	In progress
4	P&L is to share its summaries (that we usually prepare for the PPC) about the submissions received from public consultation, with Communications to better understand public sentiment around reforms.	Complete – the PPC team will share these summaries once they are prepared and finalised.

If you have any questions or issues, please feel free to reach out to me.

Kind regards,

[REDACTED]
[REDACTED] | Policy and Legislation

| Tax Practitioners Board

P [REDACTED] E [REDACTED]

tpb.gov.au | in x ▶ f



[REDACTED]

From: [REDACTED]
Sent: Wednesday, 24 July 2024 10:55 AM
To: [REDACTED]
Subject: Feedback from the TPGSF/CF this morning

OFFICIAL

Hi guys,

Just wanted to give you a summary of feedback arising out of the combined TPGSF/CF this morning:

- Overall there is significant concern in respect of the new obligations under the Determination and the impact they will have on practitioners
- **Confidentiality and conflicts of interest** – no additional specific feedback was provided in respect of the draft guidance product
- **False and misleading statements** – a lot of concern around s15(2) which is the requirement to notify the TPB/ATO when a tax practitioner has identified a false or misleading statement and the maker of the statement has failed to correct the statement. Also, further definitions/clarity around who is a ‘maker’ of a statement and who is a ‘preparer’ of a statement
- **Notifying clients of relevant matters** – a lot of discomfort around this provision, particularly in regard to defining what matters would constitute or require notification. Suggest that we need to include case studies, examples and guidance around the ‘fringe’ type matters, for example, being diagnosed with a health condition that a medical practitioner has advised will affect a practitioner’s ability to work, retiring or selling a practice, the types/circumstances where an investigation that has not been finalised would need to be disclosed.

Happy to give a further verbal update at the team meeting.

Please reach out if you have any questions.

Thanks

[REDACTED] | Policy and Legislation | Tax Practitioners Board

P [REDACTED] E [REDACTED]

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From: [Redacted]
Sent: Tuesday, 30 July 2024 5:47 PM
To: [Redacted]
Cc: [Redacted]
Subject: Key outcomes from PPC meeting

Hi Kerrie,

We have prepared a summary of the key outcomes and action items from today’s Professional Practice Committee meeting below. This is to assist with the Committee updates for the Board meeting tomorrow.

Key outcomes

- The Committee **considered** the initial draft (D1) of Exposure Draft Information Sheet relating to section 45 of the Code Determination (keeping your clients informed of all relevant matters) and made some suggestions and amendments to further clarify the draft guidance.
- The Committee **approved** the final draft (D3) of Information Sheet *TPB(I) D53/2024 Breach reporting under the Tax Agent Services Act 2009* and TPB factsheet titled ‘*Breach Reporting*’, subject to the inclusion of the Committee’s suggestions.

Action items

Action item No.	Description	Responsibility	Due date
2.1/20240730	Update D1 Information Sheet <i>TPB(I) DX/2024 Keeping your clients informed of all relevant matters</i> in accordance with the Committee’s suggestions and amendments. Once updated, P&L is to seek the Committee’s out-of-session approval on the D1 Information Sheet and supporting guidance products. Following this approval, the D1 Information Sheet is to be provided to the TPB’s Consultative Forum and Tax Practitioner Governance and Standards Forum for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).	P&L [Redacted]	4 September 2024
2.2/20240730	Update D3 Information Sheet <i>TPB(I) D53/2024 Breach reporting under the Tax Agent Services Act 2009</i> in accordance with the Committee’s suggestions and complete a final style review. Following this, P&L is to seek the Committee Chair’s out-of-session endorsement of the D3 Information Sheet and supporting guidance products and then seek the Board’s final	P&L [Redacted]	4 September 2024

	endorsement for publishing these products on the TPB's website.		
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Please let us know if you have any comments.

Kind regards,



[Redacted] | Policy and Legislation
| Tax Practitioners Board

P [Redacted] **E** [Redacted]

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From: [REDACTED]
Sent: Wednesday, 26 June 2024 4:41 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Key outcomes from PPC meeting

Hi Kerrie,

We have prepared a summary of the key outcomes and action items from yesterday’s Professional Practice Committee meeting below. This is to assist with the Committee updates for the next Board meeting.

Key outcomes

- The Committee **approved** the initial draft (D1) of Exposure Draft Information Sheet relating to section 30 of the Draft Code Determination (keeping of proper client records), subject to the Committee’s suggestions and amendments.
- The Committee provided **high level feedback** for the communications strategy that is under development regarding the Draft Code Determination.

Action items

Action item No.	Description	Responsibility	Due date
01.5a/20240625	With respect to the communications strategy for TPB Information Sheets and other guidance relating to the Draft Code Determination, P&L is to engage with Communications to explore options for a TPB ‘Town Hall’ forum, open to the public, to allow for ‘Questions & Answers’ in a less formal format as compared to current TPB webinars.	P&L [REDACTED] and Communications	3 September 2024
01.5b/20240625	Update the Committee’s briefing paper templates with the Committee’s suggested minor amendment.	P&L [REDACTED]	30 July 2024
02.1/20240625	Update D1 Information Sheet <i>TPB(I) DX/2024 Obligation to keep proper client records of tax agent services provided</i> in accordance with the Committee’s suggestions and amendments. Once updated, P&L is to seek out-of-session approval from the Committee Chair. Following this approval (and subject to finalisation of the Code Determination instrument), this is to be provided to the TPB’s Consultative Forum and Tax Practitioner Governance and Standards Forum for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues	P&L [REDACTED]	12 November 2024

identified through the under embargo consultation process).

Please let us know if you have any comments.

Kind regards,

[Redacted] | Policy and Legislation
| Tax Practitioners Board

P [Redacted] E [Redacted]

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[REDACTED]

From: [REDACTED]
Sent: Tuesday, 16 April 2024 6:59 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Key outcomes from PPC meeting [SEC=OFFICIAL]
Attachments: Professional Practice Committee Meeting Scheduling (approved by PPC on 16 April 2024).pptx; Professional Practice Committee Charter (with tracked changes).pdf; Professional Practice Committee Charter (approved by PPC on 16 April 2024).docx

OFFICIAL

Hi Kerrie,

We have prepared a summary of the key outcomes and action items from today's Professional Practice Committee (PPC) meeting below. This is to assist with Agenda Item 5.2 (Committee updates) at the Board meeting tomorrow.

We would also like to seek your availability for a post-brief meeting with [REDACTED] and myself at a time of your convenience. We could potentially book this in for one hour on an afternoon on 22, 23 or 24 April, either in person in Brisbane or via Teams. Please let us know your availability and we will make the necessary arrangements.

Key outcomes

- The Committee **approved** both a PPC meeting schedule for 2024 and revised Committee Charter. Copies of the approved documents are **attached** and ready for circulation to the Board for noting, as well as a copy of the track changed version of the Charter. It should be noted that commencement of consultation on the draft information sheets relating to the Code Determination is subject to finalisation of the Determination by government.
- The Committee **approved** the D3 Exposure Draft Information Sheets relating to Code Item 15 (D51 Information Sheet) and Code Item 16 (D52 Information Sheet), subject to the Committee's suggestions, feedback and enhancements to the information sheets, including amendments to Examples 4 and 5 in D51 and Example 4 in D52. Once updated with the Committee's amendments, the information sheets are to be sent to the PPC Chair for out-of-session approval to finalise and publish. Subject to this approval, the Board's final endorsement will be sought out-of-session for publication on the TPB's website. Publication will be supported with relevant communication activities.
- The Committee **supported** the D1 Draft Information Sheet TPB(I) DXX/2024 *False or misleading statements to the TPB or Commissioner*, subject to the inclusion of feedback from the Australian Taxation Office. Once updated with these amendments, the revised information sheet will be sent to the PPC members for out-of-session approval.
- The Committee **approved** a plan for developing a suite of TPB information products (i.e. five new information sheets and new content for an existing information sheet) to support the potential commencement of eight proposed additional obligations under Code Item 17. This is intended to provide support to registered tax practitioners with understanding their additional obligations.
- The Committee **approved** new website guidance for registered tax practitioners on making caretaker plans or arrangements in the event of becoming incapacitated and unable to run their business, subject to the inclusion of the Committee's feedback. This guidance will then be published on the TPB's website.
- The Committee **noted** the broader Work Program, in particular, the review of the TPB's library for information products to further simplify guidance for tax practitioners. This review will be considered at the next PPC meeting on 21 May 2024.
- The Committee **noted** a verbal update on the D2 Draft Information Sheet relating to the breach reporting requirements. It is anticipated that a public consultation process will commence by the end of next week.

Action items – Chair and Committee member items are highlighted in blue.

Action item No.	Description	Responsibility	Due date
02.1a/20240416	Circulate a copy of the approved PPC meeting schedule and PPC Charter with the Board via email for the purpose of noting.	PPC Chair	17 April 2024
02.1b/20240416	Consider whether the TPB's library for information products can be further simplified and present any proposed enhancements at the next Committee meeting.	P&L [REDACTED]	21 May 2024
02.1c/20240416	Consider an appropriate communications strategy to inform registered tax practitioners of the TPB's plan to run public consultation processes on its proposed new information products throughout 2024.	[REDACTED] P&L and Communications	30 June 2024
02.2a/20240416	Provide suggested changes relating to the disqualified entity case studies to P&L for inclusion in the following: <ul style="list-style-type: none"> D3 Draft Information Sheet TPB(I) D51/2023 <i>Code of Professional Conduct - Employing or using a disqualified entity in the provision of tax agent services without approval</i>, and D3 Draft Information Sheet TPB(I) D52/2023 <i>Code of Professional Conduct - Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity</i>. 	PPC member (Debra Anderson)	23 April 2024
02.2b/20240416	Update D3 Draft Information Sheets TPB(I) D51/2023 and TPB(I) D52/2023 in accordance with the Committee's suggestions, feedback and enhancements. Once updated, P&L is to seek the PPC Chair's out-of-session approval to finalise for publication. Subject to this approval, the D4 information sheets are to be provided to the Board for out-of-session final endorsement to publish on the TPB's website.	P&L [REDACTED]	21 May 2024
02.2c/20240416	Prepare new website content about Code Items 15 and 16 (regarding disqualified entities) as frequently asked questions on the TPB's website.	P&L [REDACTED] and Communications	21 May 2024
02.3a/20240416	Reflect the approved plan for developing TPB information products for the proposed Code Item 17 obligations within the broader PPC Work Program.	P&L [REDACTED]	21 May 2024
02.4a/20240416	Update D1 Draft Information Sheet TPB(I) DXX/2024 <i>False or misleading statements to the TPB or Commissioner</i> with feedback from the	P&L [REDACTED]	1 May 2024

	Australian Taxation Office and then circulate the revised information sheet with the PPC members for out-of-session approval.		
02.5a/20240416	P&L is to update the draft website guidance regarding incapacity of a tax practitioner, in accordance with the Committee’s feedback, and then provide the Communications team with a final version of the website guidance for the purposes of a style review and publication on the TPB’s website.	P&L [REDACTED]	21 May 2024

I hope this assists. Please let us know if you have any comments.

Kind regards,

[REDACTED]
 [REDACTED] | Policy and Legislation |
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 P [REDACTED] E [REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: Tuesday, 6 February 2024 7:41 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Key outcomes from PPC meeting [SEC=OFFICIAL]

OFFICIAL

Hi Kerrie,

To assist with Agenda Item 5.1 (Committee updates) at the Board meeting tomorrow, we have prepared a summary of the key outcomes from today's Professional Practice Committee meeting. You may wish to provide the following high level updates:

- The Committee approved the draft TPB Information Sheet on breach reporting requirements for registered tax practitioners, subject to feedback provided by the Committee, to issue the draft guidance under embargo for formal consultation with the TPGSF and CF members.
- The Committee agreed that, upon commencement of annual registration on 1 July 2024, the TPB will maintain its status quo for CPE hours having to be completed over a three-year period. However, this will be subject to a post-implementation review which will review the CPE policy more broadly and is anticipated to commence from 1 July 2025. The CPE policy is to be added to the PPC Work Program as an ongoing item to monitor as the broader law reform program (such as annual registration) is implemented.
- The Committee approved new FAQ website guidance for registered tax practitioners on their role in providing other services in relation to State or Territory tax laws. This was approved for publication on the TPB's website.
- The Committee noted the key learnings from the TPB's 7th Biannual Survey of tax practitioners, noting the key themes raised from the survey results in relation to the TPB's guidance materials.

I hope this assists. This has been our previous practice, i.e. to provide a summary of the key outcomes after each meeting. Please let us know whether you would like this going forward.

Kind regards,

[REDACTED] | Policy and Legislation |

Tax Practitioners Board

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From: [REDACTED]
Sent: Tuesday, 21 May 2024 5:56 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Key outcomes from PPC meeting

Hi Kerrie,

We have prepared a summary of the key outcomes and action items from today's Professional Practice Committee (PPC) meeting below. This is to assist with Agenda Item 4.6 (Committee updates) at the Board meeting tomorrow.

We would also like to seek your availability for a post-brief meeting with [REDACTED] and myself in person in Brisbane. We can book in an hour anytime from 2:00pm on any day from 27 to 31 May. Please let us know your availability and we will make the necessary arrangements, including a parking space.

Key outcomes

- The Committee **approved** the initial draft (D1) of Exposure Draft Information Sheet relating to sections 20 and 25 of the Code Determination (managing conflicts of interest and confidentiality in dealings with Government), subject to the Committee's suggestions and amendments.
- The Committee **approved** the updates and amendments relating to sections 35 and 40 of the Code Determination (competence and quality management) to the existing Information Sheet *TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009*, subject to the Committee's suggestions and amendments.
- The Committee **endorsed** a proposed new model for the TPB's information product library, which consists of two enhancements:
 - Reducing the TPB's nine categories of information products into two formal categories (Information Sheets and Legislative Instruments) and four informal categories (Exposure Drafts, Discussion Papers, Other website guidance and FAQ webpages) which will continue to be utilised for existing purposes.
 - Create a new consultations page on the TPB's website which summarises, at a high level, the TPB's consultation processes, submissions received, and actions taken in response to submissions. This would be supplemented with newly developed submission guidelines which explain how the TPB will publish submissions and how a submitter can make a request to the TPB to treat their submission as confidential.

Action items

Action item No.	Description	Responsibility	Due date
02.1a/20240521	Update D1 Information Sheet <i>TPB(I) DX/2024 Code of Professional Conduct - Maintaining independence and confidentiality in dealings with government</i> in accordance with the Committee's suggestions and amendments. Once updated (and subject to finalisation of the Code Determination instrument), this is to be provided to the TPB's Consultative Forum and Tax Practitioner Governance and Standards Forum for under embargo	P&L [REDACTED]	3 September 2024

	consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).		
02.2a/20240521	Update Information Sheet <i>TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009</i> in accordance with the Committee’s suggestions and amendments. Once updated (and subject to finalisation of the Code Determination instrument), P&L is to seek out-of-session approval from the Committee members (including the Chair). Following this approval, this is to be provided to the TPB’s Consultative Forum and Tax Practitioner Governance and Standards Forum for under embargo consultation before being released for a 28-day public consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under embargo consultation process).	P&L [REDACTED]	8 October 2024
02.3a/20240521	Seek feedback from the TPB’s Consultative Forum on the proposed new model for the TPB’s information product library prior to implementation.	P&L [REDACTED]	30 July 2024

Please let us know if you have any comments.

Kind regards,

[REDACTED] | Policy and Legislation | Tax Practitioners Board
P [REDACTED] E [REDACTED]

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FOR OFFICIAL USE ONLY

MINUTE

NO. 03-2024

Date: XX June 2024

Assistant Treasurer and Minister for Financial Services

Copies to: Treasury

RELEASE OF DRAFT GUIDANCE TO ASSIST TAX PRACTITIONERS UNDERSTAND NEW OBLIGATIONS UNDER THE TAX AGENT SERVICES (CODE OF PROFESSIONAL CONDUCT) DETERMINATION 2024

Recommendation

That you note the TPB's future release of draft guidance to assist tax practitioners understand their new obligations that are contained in *Tax Agent Services (Code of Professional Conduct) Determination 2024*.

Noted

Signature _____

Date ___/___/___

KEY POINTS

1. The *Tax Agent Services Act 2009* (TASA) contains the Code of Professional Conduct (Code), comprising of 17 Code obligations to which registered tax practitioners must comply. Code Item 17 (section 30-10(17) of the TASA) requires that registered tax practitioners comply with obligations determined by the Minister under section 30-10(12).
2. The *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination) has been made pursuant to section 30-10(12) of the TASA and introduces 8 additional obligations for registered tax practitioners to comply with.
3. To support registered tax practitioners in understanding these additional obligations, the TPB is in the process of developing new policy guidance and updating existing policy guidance, which will be consulted on and released publicly in stages.
4. This minute outlines at a high level the TPB's approach to the consultation and release of new and updated policy guidance supporting the new obligations contained in the Determination.
5. **Attachments A – C** to this minute are the TPB's draft guidance products relating to the following new obligations, which will be released for consultation in the TPB's first stage of guidance products, on [XX Month 2024]:

- Making false or misleading statements to the TPB or Commissioner (section 15 of the Determination) (new guidance product)
- Quality assurance and other internal controls (section 40 of the Determination) (updated existing guidance product)
- Conflicts of interest in dealings with government (section 20 of the Determination) and maintaining confidentiality in dealings with government (section 25 of the Determination) (new guidance product).

BACKGROUND

6. It is imperative for the TPB to consult upon and issue guidance in a timely manner to support registered tax practitioners in understanding and complying with the additional obligations conferred by the Determination.
7. To manage internal work volumes, and to ensure that consultation processes are appropriately developed, consulted upon and communicated in a structured and manageable way, the TPB has developed a staged approach, outlined in Table 1 below.
8. Items 1 to 4 in Table 1 have been identified as priority areas for which the TPB has initially developed guidance (see **Attachments A – C** to this minute). Following this, the TPB will provide guidance on the second tranche of topics, being Items 5 to 7 in the table below.

Table 1: Staged approach to issuing guidance

No.	Proposed additional obligations under the Code Determination	New or existing guidance products
1	False or misleading statements	New TPB Information Sheet (see Attachment A to this Minute)
2	Conflicts of interest in dealings with government	New TPB Information Sheet (see Attachment B to this Minute)
3	Maintaining confidentiality in dealings with government	New TPB Information Sheet (see Attachment B to this Minute)
4	Quality assurance and other internal controls	Updated existing TPB Information Sheet (see Attachment C to this Minute)
5	Ensuring tax agent services provided on your behalf are provided competently	Updated existing TPB Information Sheet
6	Keeping of proper client records	New TPB Information Sheet

No.	Proposed additional obligations under the Code Determination	New or existing guidance products
7	Keeping your clients informed of all relevant matters	New TPB Information Sheet
8	Upholding and promoting the ethical standards of the tax profession	Updated existing TPB Information Sheet

9. It is expected that the TPB will progressively release the proposed TPB information products over the 2024 calendar year.

CONSULTATION PROCESS

10. The TPB is committed to undertaking consultation in respect of the guidance it develops to support the obligations contained in the Determination. For each of the new or updated guidance products, this consultation process will involve:

- Early engagement with key stakeholders (including representatives from professional associations and co-regulators), under embargo, to assist in the design of the TPB's policy positions and identification of red line issues;
- Public consultation, allowing all stakeholders and members of the public to provide feedback on the draft guidance;
- Ongoing consultation and engagement with government stakeholders, including coregulators and Treasury, prior to the finalisation and publication of the guidance products.

NEXT STEPS

11. The TPB will engage with key stakeholders under embargo on the draft guidance products contained in **Attachments A – C** to this minute on [insert date] to seek feedback and red line issues.

12. Following this initial process, the TPB will issue guidance (updated as appropriate, depending on initial stakeholder feedback) for a 28-day public consultation period (at a minimum).

13. The TPB will then consider the feedback received through the above consultation processes before finalising and publishing the guidance, accompanied by appropriate communication activities (news articles, media releases, social media posts) and educative resources (fact sheets, webinars, website content and tools).

FURTHER INFORMATION

14. If you would like any further information, please contact either myself on [REDACTED] or at [REDACTED] or Janette Luu, Assistant Secretary on [REDACTED] or at [REDACTED]

Michael O'Neill

CEO and Secretary
Tax Practitioners Board

[REDACTED]

From: [REDACTED]
Sent: Friday, 28 June 2024 11:31 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: PPC feedback for communications strategy re Code Determination

Hi [REDACTED] and [REDACTED]

Thanks for your time this morning. As discussed, the PPC provided the following suggestions for consideration for the communications strategy:

- Our messaging about the Code Determination should continue to reassure tax practitioners that the 8 additional obligations are not particularly new as most tax practitioners would already have these practises in place.
- When we commence consultation on the information sheets for the Code Determination, we should include messaging that acknowledges the volume of legislative changes affecting tax practitioners and an explanation of the process for requesting an extension of time to make a submission if needed.
- Explore options for a TPB 'Town Hall' forum to discuss the Code Determination (once it has been approved by the Minister), which would be open to the public to allow for 'Questions & Answers' in a less formal format as compared with current TPB webinars.

If you have any queries, please feel free to reach out to me.

Kind regards,

[REDACTED] | Policy and Legislation
| Tax Practitioners Board
P [REDACTED] E [REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: Thursday, 8 February 2024 5:26 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: PPC feedback on the TPB Biannual Survey of tax practitioners [SEC=OFFICIAL]
Attachments: 3.1A - Briefing paper - Key learnings from the TPB Biannual Survey of tax practitioners.pdf

OFFICIAL

Hi [REDACTED]

We presented the **attached** Briefing Paper to the Professional Practice Committee (PPC) earlier this week and received some comments that we would like to share with you for your consideration.

The PPC provided the following relevant feedback on the TPB Biannual Survey of tax practitioners:

- Interested in better understanding why registered tax practitioners believe there should be changes to the TPB's guidance materials. Perhaps this can be explored in future surveys?
- Highlighted the importance of the TPB's communications strategy with respect to the TPB's guidance materials making an impact. Table 2 in the paper provides some useful feedback on ways to communicate the TPB's guidance materials.
- Table 3 in the paper provides some good webinar topics that may be worth considering in the future.

If you would like to discuss, please feel free to contact me.

Kind regards,

[REDACTED] | Policy and Legislation |

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Briefing paper

Key learnings from the TPB Biannual Survey of tax practitioners

Purpose

1. The purpose of this briefing paper is to provide an update to the Professional Practice Committee on the key learnings from the TPB's seventh biannual survey results that relate to the TPB's guidance materials.

Background

2. The TPB's seventh biannual survey was conducted between 11 April and 26 April 2023. It targeted both consumers (including business owners, SMSF trustees/members and individuals) and tax practitioners (including registered tax and BAS agents). A total of 4,013 responses were received from registered tax practitioners to the TPB Biannual Survey.
3. Six questions were put to registered tax practitioners which sought feedback on the TPB's guidance materials. This includes guidance published on the TPB's website, frequently asked question (FAQ) pages and webinars.

Key learnings from TPB Biannual Survey

4. Of the registered tax practitioners who responded to the survey questions, the majority of registered tax practitioners advised they have accessed the TPB's guidance material a few times a year to better understand their obligations as a tax practitioner and they agreed that the TPB's guidance is mostly useful. The majority of practitioners were of the view that there are no topics that remain uncovered in the guidance provided by the TPB that would assist in their understanding of their obligations as a tax practitioner. However, it is noted that these responses were gathered in April 2023 and may differ in the current environment, since the introduction of recent legislative reforms for the TPB.
5. A detailed summary of quantitative responses from registered tax practitioners to the TPB Biannual Survey is provided in **Table 1** below.

Table 1: Summary of quantitative responses from registered tax practitioners to the TPB Biannual Survey.

Survey questions	Response options	Wave 6 responses (%)			Wave 7 responses (%)		
		Tax agents	BAS agents	Total	Tax agents	BAS agents	Total
TP3.1 Have you accessed the TPB's guidance material to better understand your obligations as a tax practitioner? This includes guidance published on the TPB website, FAQs and TPB webinars.	Yes	85	91	87	87	83	86
	No	14	8	12	13	17	14
	Not sure	0	1	1	0	0	0
TP3.2 How often do you access the TPB's guidance?	About once a week	4	1	3	3	3	3
	A few times in a month	15	9	13	11	8	11
	About once a month	28	23	26	27	24	26
	A few times a year	48	57	51	46	54	48
	About once a year	5	10	7	13	11	12

Survey questions	Response options	Wave 6 responses (%)			Wave 7 responses (%)		
		Tax agents	BAS agents	Total	Tax agents	BAS agents	Total
TP3.3 How useful is the TPB's guidance?	Completely useful	23	19	22	18	15	18
	Mostly useful	45	62	51	49	54	50
	Somewhat useful	21	16	20	24	25	24
	Slightly useful	10	3	8	9	6	8
	Not at all useful	0	0	0	0	0	0
TP3.4 Are there any topics currently not covered in the guidance provided by the TPB, that would assist you in understanding your obligations as a tax practitioner?	Yes	12	8	11	10	4	8
	No	88	92	89	90	96	92

6. Registered tax practitioners were also asked in the TPB Biannual Survey to provide feedback on any improvements for the TPB's guidance materials. Some comments raised suggestions that the TPB has already undertaken or considered previously and was of the view that it would not be appropriate to implement, for example, providing a list of software providers, a list of providers of continuing professional education activities, a template for engagement letters and a list of professional indemnity insurance providers.
7. Some of the key themes in the responses from tax practitioners are summarised in Tables 2 and 3 below:

Table 2: Survey question TP3.3A – How could the guidance be improved to help you understand your tax practitioner obligations?

Key themes	Comments from tax practitioners
Simplifying the guidance	<ul style="list-style-type: none"> • Guidance should use Plain English and have clear definitions. • Provide a summary of obligations that are attached to links for more details. • Provide checklists for registered tax practitioners on maintaining their TPB registration. • Suggest using flowcharts or decision trees to reduce the amount of reading, and consider the way CPA Australia provides its guidance.
Providing practical examples	<ul style="list-style-type: none"> • Include more practical examples and case studies, and have less theory in the guidance. • Provide guidance intended for registered tax practitioners running a small business.
Protecting consumers	<ul style="list-style-type: none"> • Relate the guidance back to how it impacts on consumers of tax agent services.
Communicating the guidance	<ul style="list-style-type: none"> • More seminars to explain policy changes and the reasons for the changes. • Provide a program of detailed learning accompanied with questionnaires. • Communicate with registered tax practitioners on a monthly basis of both positive and negative activities that the TPB has come across during the month. • Send more information to business owners about the importance of using a registered tax practitioner. • The TPB should require registered tax practitioners to regularly view its guidance and watch the webinars. • Set up a community with Q&As. • Make it easier to find and access guidance on the website.

Table 3: Survey question TP3.4A – What topics require further guidance?

Key themes	Comments from tax practitioners
Obligations under the Code of Professional Conduct	<ul style="list-style-type: none"> • Guidance on Code Item 4 – Acting lawfully in the best interests of the client. • Information about trust accounts, in particular, how registered tax practitioners can manage a trust account when receiving money on behalf of clients and what evidence or record keeping is needed. • More webinars designed for bookkeepers who are operating as registered BAS agents.
Unregistered tax preparers	<ul style="list-style-type: none"> • What TPB action is being taken against unregistered tax preparers operating in the community.
Practice management issues	<ul style="list-style-type: none"> • How to deal with a difficult, non-compliant client and how this impacts on a registered tax practitioner’s lodgement program performance. • More information on whistleblower obligations and the management of such matters. • More information on record-keeping requirements, including source document storage, what needs to be stored, how should it be stored and for how long it should be stored. • How to manage a client base which is transferred through a merger and what are the privacy implications. • What are some other obligations that registered tax practitioners may have in relation to their staff. • Support for registered tax practitioners undergoing personal challenges, such as mental or physical challenges.

Next steps

8. P&L notes the key learnings from the TPB Biannual Survey and will continue to monitor for opportunities to improve the TPB’s guidance and information products to better support registered tax practitioners.

Contact

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Contact details

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Briefing paper

Consideration of updates and amendments to TPB(I) 36/2021 relating to competence and quality management

Purpose

1. The purpose of this document is to seek the Committee's feedback and approval to begin consultation in relation to proposed updates and amendments to Information Sheet *TPB(I) 36/2021 Supervisory arrangements under the Tax Agent Services Act 2009 (TPB(I))*.

Key matters for Committee consideration

2. P&L is seeking the Committee's consideration regarding proposed updates and amendments to TPB(I) 36/2021 (**Attachment 1**), identified by tracked-changes, which relate to the following:
 - the TPB's view in relation to the requirements of sections 35 and 40 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023 (Code Determination)*;
 - changes to the title and headings within the TPB(I) to reflect the updated purposes and information contained within the TPB(I); and
 - other miscellaneous amendments to enhance the readability of the TPB(I).
3. In particular, P&L is seeking the Committee's consideration as to whether the proposed updates and amendments adequately explain the requirements of sections 35 and 40 of the Code Determination, in the context of the existing information contained in the TPB(I).

Proposed next steps

4. Subject to the Committee's feedback and approval, the updated and amended TPB(I) will be provided to the TPB's Consultative Forum and Tax Practitioner Governance and Standards Forum under embargo before being released publicly for a 28-day consultation period (with the approval of the Committee Chair and subject to any critical issues identified through the under embargo consultation process).
5. Submissions received from TPB stakeholders and the public will be presented to the Committee, along with proposed amendments to the TPB(I), at the next suitable Committee meeting following the conclusion of the consultation period.

Attachment

Attachment 1: *Proposed D1 updates and amendments to TPB(l) 36.2021 Supervisory arrangements under the TASA*

Contact

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Briefing paper

Consideration of D1 draft Information Sheet Maintaining independence and confidentiality in dealings with government

Purpose

1. The purpose of this document is to seek the Committee's feedback and approval to begin consultation in relation to the (D1) draft Tax Practitioners Board's (TPB) Information Sheet *TPB(I) DX/2024 Code of Professional Conduct - Maintaining independence and confidentiality in dealings with government (draft Information Sheet)*.¹

Key matters for Committee consideration

2. P&L is seeking the Committee's consideration regarding the contents of the draft Information Sheet (Attachment 1) and, in particular, whether it adequately explains the TPB's view in relation to the requirements of sections 20 and 25 of the draft *Tax Agent Services (Code of Professional Conduct) Determination 2023*.

Next steps

3. Once approved, this draft Information Sheet will be provided to the TPB's Consultative Forum and Tax Practitioner Governance and Standards Forum under-embargo before being released publicly for a 28-day consultation period (with the approval of the Committee Chair and subject to any red line issues identified through the under-embargo consultation process).
4. Submissions received from TPB stakeholders and the public will be presented to the Committee along with proposed amendments to the draft Information Sheet at the Committee meeting scheduled for 3 September 2024.

Attachment

Attachment 1: Draft Information Sheet *TPB(I) DX/2024 Code of Professional Conduct – Maintaining independence and confidentiality in dealings with Government*

Contact

[REDACTED]
[REDACTED]

Contact number

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¹ In preparing this draft Information Sheet, P&L has consulted and incorporated substantive feedback from Law and Compliance and The Treasury. P&L is still waiting on feedback from the ATO.

TPB Information Sheet

TPB(I) DX/2024

Code of Professional Conduct – maintaining independence and confidentiality in dealings with government

Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of sections 20 and 25 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023* (the Determination).

While this draft TPB(I) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA). In addition, please note that the principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Please refer to the TASA and the Determination for the precise content of the legislative requirements.

Document history

This draft TPB(I) was issued on [DATE] [MONTH] [YEAR] and is based on the TASA as at [DATE] [MONTH] [YEAR].

Issued: [DATE] [MONTH] [YEAR]

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Maintaining independence and confidentiality in dealings with government

Introduction

1. This draft Information sheet (draft TPB(I)) has been prepared by the Tax Practitioners Board (TPB)¹ to assist registered tax and BAS agents (collectively referred to as 'registered tax practitioners') to understand their obligations under the following:
 - section 20 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023* (Determination)², and
 - section 25 of the Determination³.
2. While the focus of this draft TPB(I) is on the obligations in sections 20 and 25 of the Determination, it is also important to note that there are also 17 obligations in the Code of Professional Conduct (Code)⁴, additional obligations in the Determination, and further requirements that registered tax practitioners must comply with under the TASA. These include ongoing requirements in relation to maintaining registration under the TASA, including that a tax practitioner is a 'fit and proper' person⁵. Further, the obligations in this draft TPB(I) are in addition to obligations 5 and 6 of the Code (which relate to managing conflicts of interest and maintaining confidentiality).
3. The obligations seek to outline the high professional and ethical standards expected by the community of individual tax practitioners, with the objective of:
 - improving transparency and accountability,
 - protecting public trust and confidence in the integrity of the tax profession and the tax and superannuation system more broadly, and
 - strengthening the regulatory framework and the regulation of the tax profession.
4. In this TPB(I), you will find the following information:

¹ The TPB administers a system for the registration of tax agents and BAS agents (known collectively as 'tax practitioners') under the *Tax Agent Services Act 2009* (TASA).

² The TPB has also published specific information regarding the obligations of registered tax practitioners under subsection 30-10(5) of the TASA, including [TPB\(I\) 19/2014 Code of Professional Conduct – managing conflicts of interest](#).

³ The TPB has also published specific information regarding the obligations of registered tax practitioners under subsection 30-10(6) of the TASA, including [TPB\(I\) 21/2014 Code of Professional Conduct – Confidentiality of client information](#).

⁴ The provisions of the Code are contained in section 30-10 of the TASA. The TPB has also published an explanatory paper that sets out its views on the application of the Code, including Code obligations 5 and 6. Refer to TPB Explanatory paper [TPB\(EP\) 01/2010 Code of Professional Conduct](#).

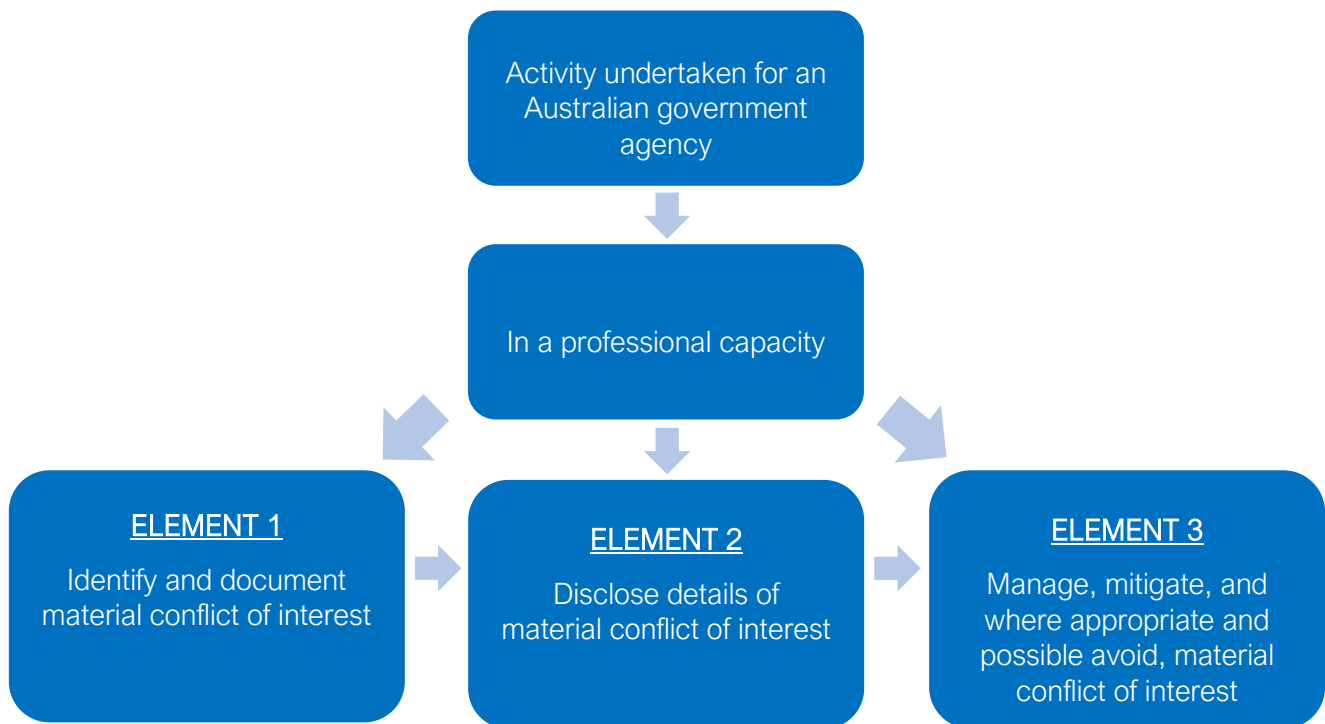
⁵ For further information, see TPB Explanatory paper [TPB \(EP\) 02/2010 Fit and proper person](#).

- Background to the legislative requirements (paragraphs 5 to 8)
- Details of the obligation under section 20 (paragraphs 9 to 61)
- Details of the obligation under section 25 (paragraphs 62 to 108)
- Consequences for failing to comply with the obligations under sections 20 and 25 (paragraphs 108 to 113)
- Case studies (paragraph 123).

Background

5. Section 30-10 of the TASA contains the Code, comprising of 17 obligations which regulate the personal and professional conduct of registered tax practitioners.
6. One of these obligations is contained in subsection 30-10(17) of the TASA, which requires registered tax practitioners to comply with any obligations that the Minister determines, by legislative instrument, under section 30-12 of the TASA.
7. On **XX MONTH** 2024, the Minister determined eight additional Code obligations, set out in the Determination, under section 30-10 of the TASA. A breach of any of the obligations contained in the Determination will be a breach of subsection 30-10(17) of the Code.
8. This draft TPB(I) deals with two of these additional Code obligations set out in the Determination which relate to independence and confidentiality. More specifically, these obligations concern the management of conflicts of interest and maintaining confidentiality in dealings with Australian government agencies in a tax practitioner's professional capacity.

What is the obligation under section 20?



9. Section 20 of the Determination requires registered tax practitioners, in relation to any activities they undertake for an Australian government agency in a professional capacity, to:
- take reasonable steps to identify and document any material conflict of interest (real or apparent) in connection with an activity undertaken for the agency; and
 - disclose the details of any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency to the agency as soon as the registered tax practitioner becomes aware of the conflict; and
 - take reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency (except to the extent that the agency has expressly agreed otherwise).⁶
10. The obligation is intended to assist in minimising potential adverse impacts to Australian government agencies where a tax practitioner has a conflict of interest in connection with an activity undertaken for an Australian government agency. This in turn helps to achieve the objectives outlined at paragraph 3 above.

⁶ It is noted that as at the date of publication of this draft TPB(I), the Government completed consultation on a draft Commonwealth Supplier Code of Conduct which is aimed at further strengthening integrity and ethical conduct in Government operations and those of its suppliers. This Code is expected to come into effect in mid-2024.

11. Section 20 does not prohibit registered tax practitioners from having conflicts of interest. Rather, it creates an obligation on tax practitioners to appropriately *manage* and *mitigate* conflicts of interest that arise, or may arise, in relation to activities that they undertake for an Australian government agency in their professional capacity. Where possible and appropriate, reasonable steps must be taken to avoid conflicts unless the Australian government agency has expressly agreed to accept a particular conflict in specific circumstances.
12. In addition, section 20 creates a positive obligation on registered tax practitioners to disclose the details of the conflict to the government agency as soon as the tax practitioner becomes aware of the conflict.
13. In circumstances where a registered tax practitioner identifies and discloses a material conflict of interest to an Australian government agency, the continued engagement by the agency of the tax practitioner will be at the discretion of the agency having regard to the nature of the conflict and any steps taken by the practitioner to manage or mitigate the conflict. This recognises that Australian government agencies should be able to engage appropriate expertise who act independently and with integrity in undertaking activities to assist Government in shaping the Australian taxation and superannuation system.
14. It is also noted that the Accounting Professional and Ethical Standards Board (APESB) has released [APES 110 Code of Ethics for Professional Accountants](#) (APES 110) and [APES 220 Taxation Services](#) (APES 220), which apply to members of relevant professional bodies that have adopted it. While not binding on all registered tax practitioners, these standards provide useful guidance on what steps a tax practitioner can take to ensure the tax practitioner has adequate arrangements in place for the management of conflicts of interest that may arise in relation to activities that are undertaken in the capacity of a registered tax practitioner. APES 110 notes, among other things, that a member is required to not allow conflict of interests to override professional or business judgments,⁷ while *APES 220 Taxation Services* also outlines requirements as to objectivity.

Activities undertaken for an Australian government agency in tax practitioner's professional capacity

15. The obligation under section 20 of the Determination applies to activities undertaken by a registered tax practitioner for an Australian government agency in the tax practitioner's professional capacity, whether paid or otherwise.
16. 'Australian government agency' is defined in section 995-1 of the *Income Tax Assessment Act 1997* as the Commonwealth, a State or a Territory, or an authority of the Commonwealth, or of a State or a Territory. The Department of the Treasury, Tax Practitioners Board, Australian Taxation Office, Australian Securities and Investments

⁷ See APES 110 *Code of Ethics for Professional Accountants*, sections 100, 220 and 310 on the Accounting Professional & Ethical Standards Board website at www.apesb.org.au

Commission, and the Australian Competition and Consumer Commission are examples of Australian government agencies.

17. Broadly, the term 'professional capacity' would include activities undertaken by the registered tax practitioner:
 - in their capacity as a registered tax practitioner, and
 - in any other skilled or expert capacity where the relevant activities fall outside of the definition of a tax agent service⁸ or BAS service⁹.
18. Practically speaking, this includes providing any advice, assistance, or feedback to the government, whether paid or otherwise. However, it does not extend to activities or interactions that are of a personal nature.¹⁰
19. Expanding the obligation to activities outside of those undertaken in an entity's capacity as a registered tax practitioner highlights the importance of the tax practitioner's role in representing the tax profession and gives the public greater confidence and assurance in the integrity of the profession.¹¹
20. Relevant activities that a registered tax practitioner may undertake in their professional capacity may include, but are not limited to, the following:
 - providing expert advice, assistance, or feedback on technical and professional matters, including potential legislative changes,
 - providing advice, assistance, or feedback on strategy,
 - providing accounting and/or information technology (IT) services,
 - undertaking research activities, such as attitudinal surveys and feasibility studies, and
 - overseeing government functions.
21. The TPB is of the view that these activities may be undertaken through either a formal engagement (such as through a procurement process, or a confidential consultation process) or an informal engagement (which may include internal meetings and discussions, or an informal consultation processes).

⁸ For more information in relation to the definition of a tax agent service, see [TPB Information Sheet TPB\(I\) 39/2023 What is a tax agent service?](#).

⁹ For more information in relation to the definition of a tax agent service, see [TPB Information Sheet TPB\(I\) 38/2023 What is a BAS service?](#).

¹⁰ Page 8 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

¹¹ Page 1 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

What is a 'conflict of interest'?

22. A conflict of interest is where a registered tax practitioner has a personal interest or has a duty to another person which is in conflict with the duty owed to the Australian government agency.
23. A conflict of interest may be direct or indirect, and real or apparent. Also, it can arise before the registered tax practitioner accepts an engagement or at any time during the engagement.
24. A real conflict of interest arises where a registered tax practitioner has multiple interests and cannot objectively and impartially act in one of the interests.
25. An apparent conflict of interest arises where a registered tax practitioner has multiple interests, and the nature of those interests are such that they give rise to a reasonable perception by the public that one interest could possibly impact the motivation to act for another interest.

When is a conflict of interest 'material'?

26. The TASA and TASR do not provide any guidance on when a conflict of interest will be 'material'. Similarly, the Determination does not define the term 'material' in the context of conflicts of interest. However, it does provide some guidance by way of examples that distinguish between a conflict that is 'material' and one that is not material.¹²
27. The Macquarie Dictionary¹³ relevantly defines 'material' in the following way:
 - adjective: of substantial import or much consequence
 - phrase: material to, pertinent or essential to.
28. The TPB considers that the test of whether a conflict of interest is 'material' will depend on the facts and circumstances and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect it to be of substantial import, effect or consequence to the other entity.
29. This requires the tax practitioner to exercise their professional judgement, taking into account the facts and circumstances surrounding the activities they are undertaking for the government agency, including:
 - the information known to the tax practitioner about the activities, and

¹² See page 9 of the Explanatory Statement to Tax Agent Services (Code of Professional Conduct) Determination 2024.

¹³ The Macquarie Dictionary, Macmillian Publishers Australia, 2023.

- the consequences for the government agency if the tax practitioner’s personal interest is such that it could give rise to a real or apparent conflict of interest that could affect their ability to discharge their duties and/or obligations to the government agency.
30. A material conflict of interest may arise in circumstances that include, but are not limited to – where a registered tax practitioner:
- is engaged by a government agency to consult on proposed Government law reform that impacts clients of the registered tax practitioner such that it may result in a potential or perceived benefit or gain to the registered tax practitioner and/or their clients,
 - may benefit or gain financially from their engagement with the government agency directly or indirectly (this could include a benefit to the registered tax practitioner themselves, their employer, client and/or other associate),
 - misuses confidential information obtained in dealings with Government in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner, and
 - interferes in Government decision making in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner.

What are ‘reasonable steps to identify and document any material conflict of interest’?

31. The first element of the obligation under section 20 of the Determination requires that a registered tax practitioner take reasonable steps to identify and document any material conflict of interest (whether real or apparent) in connection with an activity undertaken for the Australian government agency in the registered tax practitioner’s professional capacity.
32. Registered tax practitioners should keep adequate records of any material conflict of interest identified in connection with an activity undertaken for an Australian government agency.
33. The TASA and the Determination do not provide guidance on the specific steps that a registered tax practitioner should take to document a material conflict of interest.
34. In these circumstances, the TPB expects that registered tax practitioners record the conflict of interest as soon as possible and practicable after the conflict of interest is identified. The record should contain sufficient details of the conflict of interest, including details of the materiality of the conflict. For more information on the details that a practitioner should record or document, see paragraph 41 below.

35. A determination of whether the registered tax practitioner has taken *reasonable steps* to identify and document a material conflict of interest will be a question of fact having regard to the particular circumstances of the matter in question.¹⁴
36. Relevant factors in making a determination as to whether a practitioner has taken reasonable steps to identify and document any material conflict of interest may include the following:
- the size of the tax practitioner entity,
 - the type of work undertaken by the tax practitioner,
 - the client base of the tax practitioner,
 - the likelihood of conflicts of interest arising,
 - the sensitive nature of the activities undertaken for the government agency,
 - any possible adverse consequences for the government agency should a conflict of interest arise,
 - whether the tax practitioner has provided training to staff on identifying, disclosing and documenting conflicts of interest,
 - whether the tax practitioner has established procedures for the disclosure and record-keeping of potential conflicts of interest,
 - whether the tax practitioner has established procedures for identifying and documenting conflicts of interest, which could include:
 - preliminary conflict checks prior to accepting clients or allocating staff to projects,
 - maintaining a conflict of interest register, and
 - information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

Disclose details of any material conflict of interest as soon as you become aware of the conflict

37. The second element of the obligation under section 20 of the Determination requires that a registered tax practitioner disclose the details of any material conflict of interest (real or

¹⁴ See, for example, *ASIC v Citigroup Global Markets Australia Pty Ltd* (ACN 113 114 832) (No. 4) [2007] FCA 963.

apparent) that arises in connection with an activity undertaken for the agency to the agency as soon as the tax practitioner becomes aware of the conflict.

38. The obligation to disclose a conflict of interest is not limited to a tax practitioner disclosing information about their own material conflicts of interest. It extends to *any* material conflict of interest that they are aware of that arises in connection with *any* activity undertaken for the agency (whether the same or different activity) or in relation to *any* activity undertaken for another government agency. This may include any conflict of interest of any employee, associate, contractor or other relevant entity.
39. For example, where a tax practitioner is undertaking an activity for an agency in their professional capacity and knows of another person's or entity's conflict of interest in undertaking the same or a different activity for that agency, section 20 of the Determination imposes an obligation on the tax practitioner to disclose the details of that conflict of interest to the agency.
40. The material conflict of interest must be disclosed as soon as the tax practitioner becomes aware of the conflict.

What details need to be disclosed to the agency

41. Details to disclose to the government agency may include, but are not limited to, the following:
 - the nature of the conflict,
 - the extent of the conflict,
 - what interest, association or incentive gives rise to the conflict,
 - the identity of the registered tax practitioners or others related to the conflict and the extent to which they have been involved in the services provided to the government agency,
 - when the conflict was first identified,
 - how the advice or services provided to the government agency might have been different had there not been a conflict of interest,
 - any benefit, financial or otherwise, obtained due to the conflict of interest, and
 - whether any actions have been taken or are proposed to avoid the conflict or to mitigate any damage arising from the conflict.

42. The disclosure should:

- be made at the earliest possible opportunity after becoming aware of the material conflict of interest,
 - be specific and meaningful to the Australian government agency,
 - occur before or when the relevant activities undertaken for the Australian government agency occur, but in any case, at a time that allows the government agency a reasonable time to assess the effect of the conflict of interest, and
 - refer to the specific activities to which the conflict relates.
43. The form of the disclosure must be sufficient to allow the government agency to make an informed decision about how the conflict may affect the activities the registered tax practitioner is engaged in and the management of those activities. The government agency will then determine whether, and to what extent, the registered tax practitioner can continue to engage in those activities.
44. Where a registered tax practitioner is unsure as to whether a conflict of interest arises or whether the conflict is material or not, the tax practitioner should err on the side of caution and disclose the details of the potential conflict of interest to the relevant government agency.

What are ‘reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest’?

45. The third element of the obligation under section 20 of the Determination requires a registered tax practitioner to take reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest that arises in connection with an activity undertaken for an Australian government agency (except to the extent that the agency has expressly agreed otherwise).
46. A determination of whether the conflict management arrangements employed by a registered tax practitioner are sufficiently adequate to meet the obligation under section 20 of the Determination will be a question of fact having regard to the particular circumstances.
47. A number of mechanisms could be used to manage, mitigate, and avoid a conflict of interest. It will be up to the registered tax practitioner to exercise their professional judgement to determine the most appropriate method to meet the obligation under section 20 of the Determination.

Managing and mitigating a conflict of interest

48. Section 20 of the Determination requires registered tax practitioners to take reasonable steps to manage and mitigate any material conflict of interest that they have identified in connection with an activity undertaken for an Australian government agency in their professional capacity.
49. The Macquarie Dictionary relevantly defines 'manage' in the following way:
- to take charge or care of;
 - to handle, direct, govern, or control in action or use.
50. Further, the Macquarie Dictionary relevantly defines 'mitigate' in the following way:
- to moderate the severity of.
51. Reasonable steps to manage and mitigate a conflict of interest may require a registered tax to:
- assess and evaluate the conflict of interest,
 - implement appropriate mechanisms to manage or control the impact of the conflict of interest on the tax practitioner's advice or decisions, or the decisions of the government agency, and
 - implement appropriate mechanisms to mitigate the conflict of interest.
52. What is reasonable in the circumstances will be a case-by-case decision involving consideration of a number of factors, including:
- the size of the tax practitioner entity,
 - the type of work undertaken by the tax practitioner, and
 - the likelihood of conflicts of interest arising.
53. Examples of reasonable steps include, but are not limited to, the following:
- enforcing procedures for managing, mitigating, and avoiding conflicts of interest,
 - allocating staff to projects in a way that manages or avoids potential conflicts of interest, for example, by not allocating staff with conflicts to certain projects or tasks, or by allocating staff with conflicts of interest to work on initial

identification and analysis of issues but having staff without conflicts of interest reviewing that analysis and making final decisions,

- having internal governance policies in relation to conflicts of interest that include consequences for failing to comply with those procedures, and
- maintaining a conflict of interest register and information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

54. Additional techniques that may assist a registered tax practitioner to manage and mitigate conflicts of interest may include:

- placing a positive onus on employees or anyone else providing relevant services on behalf of the registered tax practitioner in relation to the activities undertaken for the Australian government agency to declare conflicts of interest, including reporting to appropriate people, and signing relevant declarations as appropriate,
- developing a register of private interests (in conjunction with appropriate protocols) and regularly revising the register,
- reviewing conflict of interest declarations periodically,
- relevant training, including to employees or anyone else providing relevant services on behalf of the registered tax practitioner in relation to the activities undertaken for the Australian government agency, to ensure appropriate awareness and understanding of what constitutes a conflict of interest and how to act in accordance with relevant internal procedures and protocols (including, for example escalation procedures), and
- seeking advice from an independent third party, which may include legal advice.¹⁵

Avoiding a conflict of interest

55. Section 20 of the Determination requires registered tax practitioners, where appropriate and possible, to avoid any material conflict of interest that they have identified in connection with an activity undertaken for an Australian government agency, except to the extent that the government agency has expressly provided otherwise.

56. A number of mechanisms may be adopted to avoid a conflict of interest, such as those described at paragraphs 53 and 54 above. Registered tax practitioners should exercise

¹⁵ See, for examples, APES 110 Code of Ethics for Professional Accountants, sections 220 and 310 on the Accounting and Professional & Ethical Standards Board website at www.apesb.org.au.

their professional judgement to determine the most appropriate method to avoid a conflict of interest.

57. In some cases, regardless of arrangements put in place, conflicts will be unmanageable and the only way to adequately manage the conflict will be to avoid it altogether. This will generally require the registered tax practitioner to decline the engagement. Otherwise, the continued engagement by the government agency of the practitioner will be at the discretion of the agency having regard to the nature of the conflict and any steps taken by the practitioner to manage or mitigate the conflict.

Continued engagement at the discretion of the Australian government agency

58. Once a conflict of interest is disclosed to the Australian government agency, the continued engagement of the registered tax practitioner will be at the discretion of the Australian government agency.

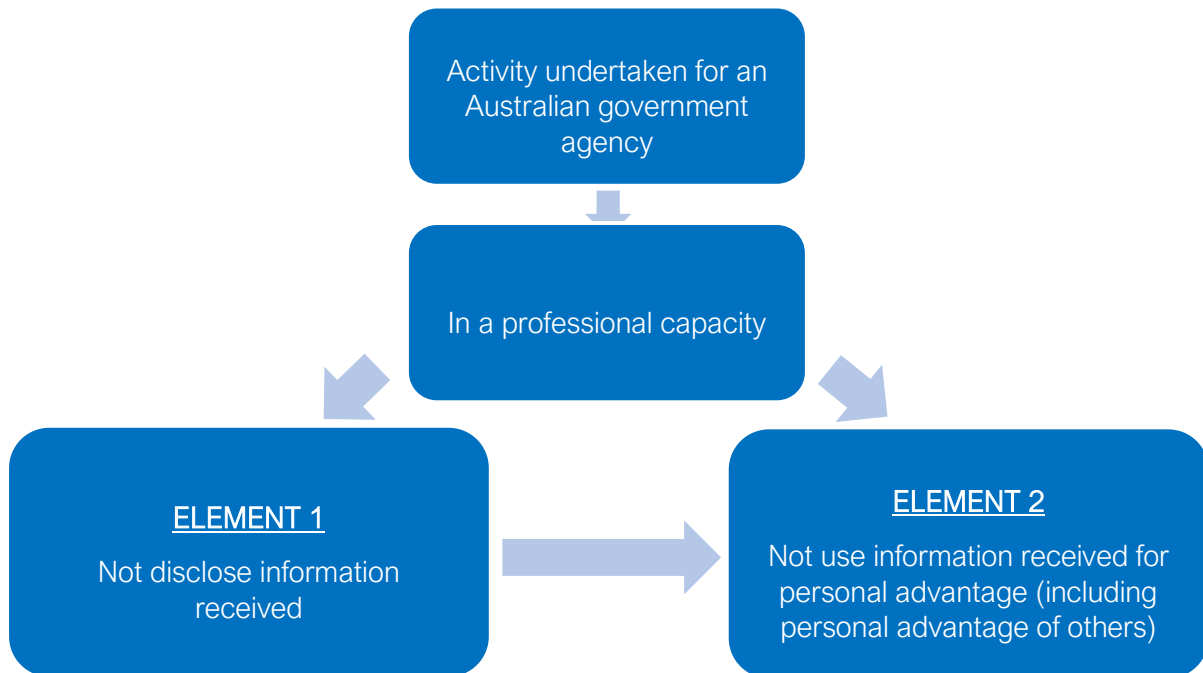
59. An assessment of whether to continue with the engagement may consider factors such as:

- the nature and extent of the conflict of interest,
- steps taken by the tax practitioner to manage the conflict of interest,
- any mitigating actions taken by the tax practitioner,
- the sensitive nature of the activities undertaken for the Australian government agency,
- the damage, financial or otherwise, that may result should the engagement continue,
- whether there are opportunities to obtain information and/or services relevant to the activities undertaken by the Australian government agency from an entity that does not have a conflict,
- the extent to which the risks arising from the conflict can be appropriately managed, and
- whether the risk of accepting the conflict outweighs the risk of not obtaining the necessary information and/or services relevant to the activities undertaken by the Australian Government agency.

60. The discretion recognises that there may be circumstances where the only way the government agency can obtain relevant and necessary expertise is from a tax practitioner that has a conflict of interest.

61. In these circumstances, the government agency may provide express consent to accept a conflict of interest. Where express consent is provided, the conflict of interest must be managed in a way that is consistent with that express consent.

What is the obligation under section 25?



62. Section 25 of the Determination gives rise to two obligations in relation to maintaining confidentiality in dealings with Australian government agencies:
- subject to some exceptions (see paragraphs 81 to 93), not *disclose* any information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken for that agency in an entity's professional capacity, and
 - subject to some exceptions (see paragraphs 103 to 107), not *use* any information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken for that agency in an entity's professional capacity, for the registered tax practitioner's personal advantage, or for the advantage of an associate employee, employer or client of the tax practitioner.
63. The obligation is intended to protect against the unauthorised disclosure and improper use by registered tax practitioners of information they obtain in relation to activities they undertake for an Australian government agency.

Activities undertaken for an Australian government agency in your professional capacity

64. Like the obligation under section 20 of the Determination, the obligations under section 25 apply to activities undertaken by a registered tax practitioner for an Australian government agency in the practitioner's professional capacity, whether paid or otherwise.
65. For more information in relation to activities undertaken for an Australian government agency in a tax practitioner's professional capacity, see paragraphs 15 to 21 above.

Obligation to not disclose information

66. Subsection 25(1) of the Determination prohibits registered tax practitioners from disclosing information they receive (directly or indirectly) from an Australian government agency in connection with activities they undertake for the government agency in their professional capacity, unless there is a legal duty to do so or to the extent that the following apply:
- a. it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency for further disclosure, and
 - b. any further disclosure of the information was done consistently with the agency's authorisation.
67. For example, these requirements may limit authorised disclosure of government information to certain tax practitioners or individuals within an entity, rather than the entity as a whole.¹⁶
68. The obligation is not intended to apply to information released by the government agency to the general public (either published on a publicly available government website or through the media), nor does it extend to activities or interactions of a personal nature.¹⁷
69. The key concepts of this obligation are explained further below.

What is 'information'?

70. 'Information' refers to the acquiring or deriving of knowledge obtained in connection with activities undertaken for an Australian government agency by a registered tax practitioner in their professional capacity. This information could be acquired either directly or indirectly from the government agency or other sources.
71. Examples of information that may be received from an Australian government agency include the following:

¹⁶ Ibid, page 11.

¹⁷ Page 10 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

- proposed government reform, including potential legislative changes,
- information about procurement processes, including tender or pricing information, an agency's project budget, pre-tender estimates, or evaluation methodologies,
- personal information about entities, and
- cabinet in-confidence documents or market sensitive information.

What is a third party?

72. The obligation under section 25 will apply to any disclosure to a 'third party'.
73. A third party means any entity other than the registered tax practitioner and the government agency.
74. In relation to a registered tax practitioner that outsources a component of the tax agent services to another entity (for example, another registered tax practitioner, a legal practitioner, a contractor, or an overseas or offshore entity), the third party would include that other entity.
75. Further, a third party may also include entities that maintain offsite data storage systems (including 'cloud storage').
76. In the case of a tax agent with a tax (financial) advice services condition that is an authorised representative of an Australian financial services (AFS) licensee, a third party includes the AFS licensee, and vice versa.
77. Subject to the relevant contractual arrangements, a third party may also include other AFS licensees, authorised representatives, para-planners, product providers and advisers, insurance brokers, and technical teams and advisers.

In what circumstances can a tax practitioner disclose information to a third party?

78. A registered tax practitioner may only disclose information received in connection with activities undertaken for an Australian government agency if:
- it is reasonable to conclude that the further disclosure of the information received from the Australian government agency was authorised by that agency and the further disclosure was done consistently with the agency's authorisation, or
 - there is a legal duty to do so.

79. This ensures that government agencies can establish the limits on with who and how the information may be shared.
80. Subsection 25(1) of the Determination complements section 20 in circumstances where the disclosure is authorised to certain registered tax practitioners with a need to know the information, and not authorised to be disclosed to people who may have a material conflict of interest. For example, these requirements may limit authorised disclosure of government information to certain tax practitioners or individuals within an entity, rather than the entirety of an entity.¹⁸

Reasonable to conclude further disclosure of information was authorised by Australian government agency

81. Where it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency for further disclosure, and the further disclosure of the information was done consistently with that authorisation, the tax practitioner will not fall foul of the obligation in subsection 25(1) of the Determination.
82. Applying this standard, if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the further disclosure of the information was authorised by the government agency, this will be sufficient. It is not necessary to determine the question with any certainty. For example, it would be reasonable to conclude that further disclosure of the information was authorised by the Australian government agency in the following circumstances:
- the further disclosure was expressly authorised by the government agency, either in writing or otherwise (for example, the formal engagement letter included a clause authorising the disclosure of information), or
 - authorisation of the further disclosure was implied by the government agency, either in writing or otherwise.
83. Other relevant factors in determining whether it is reasonable to conclude that further disclosure of the information was authorised by the Australian government agency may include the following:
- comments made by the government agency when providing the information to the tax practitioner, or
 - the availability of the information provided to the tax practitioner from other sources.

¹⁸ Page 11 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

84. Ultimately, the tax practitioner should use their professional judgment to assess whether the further disclosure of the information by the tax practitioner was authorised, having regard to the circumstances.
85. There is no requirement that the information be marked as confidential or identified as for limited distribution although this may be a relevant factor in interpreting whether it is reasonable to conclude that further disclosure of the information is authorised by the government agency.
86. Where a registered tax practitioner intends to disclose, to a third party, information received from an Australian government agency in connection with any activities undertaken for the government agency, the registered tax practitioner should, prior to any disclosure, clearly inform the government agency that there will be such a disclosure and obtain the government agency's permission. This permission may be by way of signed letter outlining the information that is to be disclosed and to whom the information is to be disclosed to, signed consent or other communication with the government agency. In all cases, the relevant communication should outline the disclosures to be made, as well as information about the entity/entities that will have access to the information disclosed.
87. While there is no set formula or methodology used to obtain the Australian government agency's permission, the TPB suggests that registered tax practitioners be clear in explaining to the government agency where information may be disclosed (including, among other things, where a component of the activity or add-on activity will be completed). For example, to avoid any likelihood of a registered tax practitioner's practices being seen as misleading, the TPB suggests that tax practitioners do not imply or state that all activities undertaken for the government agency will be completed in Australia, if that is not the case.
88. In relation to outsourcing arrangements and cloud storage arrangements, the TASA does not specifically prohibit these activities. However, tax practitioners must consider their obligations under section 25 of the Determination in relation to these arrangements to ensure confidentiality of information received from an Australian government agency in connection with any activities undertaken for the government agency, including appropriate disclosure in regard to where data is being sent and stored.¹⁹
89. While not binding on all registered tax practitioners, further useful guidance on what steps a tax practitioner may take when providing or utilising outsourced services may be found in specific Accounting Professional and Ethical Standards Board (APESB) guidance.²⁰ It is also noted that TPB accredited recognised professional associations may be able to assist

¹⁹ See also TPB Practice Note [TPB\(PN\) 1/2017 Cloud computing and the Code of Professional Conduct](#).

²⁰ See, in particular, [APES Guidance Note GN 30 – Outsourced Services](#). This guidance note applies to members of relevant professional bodies that have adopted it.

in providing practical guidance, while recognising that there is not a default one-size-fits-all template and that arrangements will need to be mindful of the particular circumstances.²¹

Legal duty to do so

90. A registered tax practitioner may disclose information in connection with activities they undertake for an Australian government agency to a third party without the government agency's agreement if the tax practitioner has a legal duty to disclose the information.

91. Examples of circumstances where a registered tax practitioner may have a legal duty to disclose such information to a third party include:

- providing information requested by the TPB in undertaking enquiries about the registered tax practitioner's conduct, including information requested under a notice issued pursuant to section 60-100 of the TASA;
- providing information to a court or tribunal pursuant to a direction, order, or other court process to provide that information;
- providing information to AUSTRAC in accordance with reporting obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act);²²
- providing information or documents to the Australian Taxation Office (ATO) under a notice pursuant to section 353-10 in Schedule 1 to the *Taxation Administration Act 1953* concerning taxation laws;
- providing information to an AFS licensee pursuant to section 912G of the *Corporations Act*, as inserted by ASIC Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*, which requires an authorised representative of an AFS licensee to give records to the AFS licensee if requested by the AFS licensee, provided the request is made:
 - in connection with the obligations imposed on the AFS licensee under Chapter 7 of the *Corporations Act*; and
 - within seven years after the day on which the personal advice was provided to the client.

²¹ See also TPB Practice Note [TPB\(PN\) 2/2018 Outsourcing and offshoring of tax services – Code of Professional Conduct considerations](#).

²² The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) imposes transaction and compliance reporting obligations on reporting entities when they provide designated services; the requirements set rules with respect to customer due diligence, identification, record keeping and reporting. For further information on complying with obligations under the AML/CTF Act, refer to the [AUSTRAC compliance guide](#) (Chapter 7 provides an overview of the AML/CTF Act reporting obligations) available at austrac.gov.au

92. The TASA, including section 25 of the Determination, does not affect the law relating to legal professional privilege (LPP).²³ LPP protects confidential communications between a lawyer and their client from compulsory production. At times, a registered tax practitioner may be in possession of client documents or information that may be subject to LPP, such as legal advice about a client's tax affairs which has been provided on a confidential basis. Before disclosing client documents or information to a third party, a tax practitioner should consider whether any of the documents may be subject to LPP. Where a tax practitioner considers that LPP may apply, they should seek legal advice as to the application of LPP. Accordingly, in the practical examples given in paragraph 123 below, a tax practitioner would need to consider any additional LPP obligations.
93. If a registered tax practitioner is concerned as to whether there is a legal duty to disclose information received in connection with any activities they undertake with the Australian government agency to a third party, the tax practitioner should consider seeking independent legal advice.

Inadvertent disclosure

94. Registered tax practitioners also need to ensure they have appropriate arrangements to prevent inadvertent disclosure.²⁴ In this regard, the following are some examples of where tax practitioners need to be particularly mindful of their obligations:
- leaving information in unsecured locations which may be accessed by third parties,
 - disposing (such as trading in or selling to a second-hand market) of IT equipment that contains / stores data that may be accessible by third parties,
 - the use of shredding and data disposal services,
 - the use of external service providers which may include, for example, IT consultants and cleaners,
 - the use of virtual meetings to discuss information when third parties may be in attendance,
 - the use of public Wi-Fi when providing services for a government agency.

²³ See section 70-50 of the *Tax Agent Services Act 2009*.

²⁴ The term 'appropriate arrangements' is consistent with the OAIC's APP 11 which states that an entity must take reasonable steps to protect personal information from unauthorised disclosure: see [Chapter 11: APP 11 — Security of personal information - Home \(oaic.gov.au\)](#).

Other considerations – Privacy

95. In addition to a tax practitioner's obligations under subsection 25(1) of the Determination, the *Privacy Act 1988* (Cth) sets out a number of Privacy Principles which govern the use of, storage and disclosure of personal information and other conduct by organisations.²⁵ Some of these privacy principles may be relevant to the obligation under subsection 25(1) of the Determination.
96. Tax practitioners should seek their own advice about whether the provisions of the *Privacy Act 1988* apply to them. Information about obligations under the *Privacy Act 1988* is accessible from the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

Obligation to not use information for personal advantage

97. Subsection 25(2) of the Determination prohibits registered tax practitioners from using information they receive (directly or indirectly) from an Australian government agency in connection with activities they undertake for the government agency in a professional capacity, in a way that may provide a personal advantage, except to the extent the following apply:
- a. it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency to be used in a way that may provide for such a personal advantage, and
 - b. any further use of the information was done consistently with the agency's authorisation.

What is a personal advantage?

98. 'Personal advantage' is not defined in the TASA.
99. The TPB is of the view that a personal advantage refers to interests that involve potential gain, financial or otherwise, for the registered tax practitioner. It may also be direct or indirect.
100. It is not necessary that the use of the information was likely or guaranteed to result in a personal advantage.²⁶ The mere possibility that the information has the potential to result in a personal advantage is enough to trigger the obligation.

²⁵ 'Organisation' is defined in section 6C of the *Privacy Act 1988* and excludes certain small business and small business operations; see further section 6D of the *Privacy Act 1988*.

²⁶ Page 11 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

101. The obligation imposes a strict restriction on registered tax practitioners to ensure that no personal advantage is taken from using information obtained from government agencies in relation to activities undertaken for that agency, except where it is reasonable to conclude that the agency authorised this use.²⁷
102. Subsection 25(2) of the Determination extends the obligation further to include the use of that information for the personal advantage of an associate, employee, employer, or client. This ensures that any potential indirect benefits do not flow to the registered tax practitioner through the unauthorised disclosure of such information for the personal advantage of others.

In what circumstances can a tax practitioner use information for personal advantage?

103. A registered tax practitioner may only use information received in connection with activities undertaken for an Australian government agency for the tax practitioner's personal advantage, or the advantage of an associate, employee, employer, or client, if:
- a. it is reasonable to conclude that the use of the information received from the government agency was authorised by that agency to be used in a way that may provide such a personal advantage, and
 - b. any further use of the information was done consistently with the agency's authorisation.
104. A registered tax practitioner must satisfy both parts of paragraph 103 above to be able to use the information for their personal advantage.
105. Applying this standard, if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the use of the information for such purpose was authorised by the Australian government agency, this will be sufficient. It is not necessary to determine the question with any certainty, although it is recommended that tax practitioners seek consent if in any doubt.
106. Ultimately, the tax practitioner should use their professional judgment to assess whether the use of the information for the tax practitioner's personal advantage, or the advantage of others, was authorised, having regard to the circumstances.
107. In determining whether it is reasonable to conclude that the Australian government agency authorised the use of the information for the personal advantage of the registered tax practitioner, or for the advantage of an associate, employee, employer or client, the following factors may be relevant:

²⁷ Ibid.

- the use of the information for the personal advantage of the registered tax practitioner (or others) was expressly authorised by the government agency, either in writing or otherwise (for example, the formal engagement letter included a clause authorising the information to be used in such a manner), or
- the use of the information for the personal advantage of the registered tax practitioner (or others) was implied by the government agency, either in writing or otherwise.

Consequences for failing to comply under the TASA

108. A breach of any of the requirements in the Determination, including sections 20 and 25, will constitute a breach of subsection 30-10(17) of Code in the TASA.

109. From 1 July 2024, registered tax practitioners will be required to notify:

- the TPB if they have reasonable grounds to believe that they have breached the Code and that breach is significant, and
- the TPB and the relevant recognised professional association (if applicable) if they have reasonable grounds to believe that another registered tax practitioner has breached the Code and that breach is significant.²⁸

110. If the TPB finds that a registered tax practitioner has breached the Code, the TPB may impose one or more of the following sanctions:

- a written caution
- an order requiring the registered tax practitioner to do something specified in the order
- suspension of the registered tax practitioner's registration
- termination of the registered tax practitioner's registration (including a period within which the terminated tax practitioner may not re-apply for registration).

111. In addition, the same conduct which may constitute a failure to comply with sections 20 and 25 of the Determination could also constitute a breach of another Code obligation (such as the obligation to act with honesty and integrity).

²⁸ For more information on the new breach reporting obligations, including consequences for failing to comply, see draft TPB Information Sheet (TPB(I) D53/2024 Breach reporting under the *Tax Agent Services Act 2009*).

112. Further, if the TPB finds that a registered tax practitioner has failed to meet an ongoing tax practitioner registration requirement (for example, by no longer being a fit and proper person), the TPB may terminate the tax practitioner's registration.
113. Ultimately, determining whether a registered tax practitioner has contravened the TASA will be a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.

Comparison with the *Corporations Act 2001 (Cth)* for tax agents with a tax (financial) advice services condition

114. The TPB recognises that the obligations of some Australian financial services (AFS) licensees and their representatives under the *Corporations Act 2001 (Cth)* (Corporations Act) are similar to some obligations under the TASA.
115. Ultimately, while compliance with relevant Corporations Act and Australian Securities and Investments Commission (ASIC) requirements will be a relevant factor, it is not conclusive in relation to whether obligations under sections 20 and 25 of the Determination have been satisfied.
116. In particular, it is noted that paragraph 912A(1)(aa) of the Corporations Act provides that a financial services licensee must:
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative.
117. In addition, subsection 961B(1) of the Corporations Act requires that, in the provision of personal advice to a person as a retail client, the *provider* must act in the best interests of the client in relation to the advice (best interests duty).
118. Further, the best interests duty is supplemented by subsection 961J(1) of the Corporations Act which requires that if the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of the provider or their related parties (such as licensees, authorised representatives and associates), the provider must give priority to the client's interests when giving the advice (conflicts priority rule).²⁹

²⁹ Generally, compliance with the best interests duty under the Corporations Act is met by following the safe harbour steps set out in subsection 961B(2) of the Corporations Act. For further information, see ASIC Regulatory Guides *RG 175: Licensing: Financial product advisers - conduct and disclosure* and *RG 244: Giving information, general advice and scaled advice*.

119. The primary distinction between the obligations under section 20 of the Determination as compared with the best interests duty / conflicts priority rule is that section 20 of the Determination requires that the registered tax practitioner identify to certain matters in relation to material conflicts of interest, whether real or apparent. In comparison, the best interests duty / conflicts priority rule under the Corporations Act is more narrowly focused on how to deal with an actual conflict of interest.
120. Further, the best interests duty / conflicts priority rule under the Corporations Act merely requires that the client's interests be prioritised in the event of an actual conflict, whereas section 20 of the Determination is broader and requires that arrangements must be in place in relation to material conflicts of interest, whether real or apparent, and if possible and appropriate, reasonable steps are to be taken to avoid the conflict of interest.³⁰
121. Another distinction between the obligation under section 20 of the Determination, and the best interests duty / conflicts priority rule is that section 20 applies broadly to any activities that a registered tax practitioner undertakes for an Australian government agency in their professional capacity. In comparison, the best interests duty / conflicts priority rule under the Corporations Act only applies to those providing personal advice to retail clients.
122. It is noted that if an AFS licensee or an authorised representative of an AFS licensee fails to comply with the Corporations Act (including the best interests duty), they may be liable for:
- a civil penalty³¹ and / or
 - an order for compensation for loss or damage suffered by the client.³²

³⁰ See also paragraphs 31 to 61 in this information sheet. In particular, a registered tax practitioner should use their professional judgment to determine the most appropriate method to identify, manage and mitigate a particular conflict.

³¹ See sections 961K and 961Q of the Corporations Act.

³² See section 961M of the Corporations Act.

Case studies – section 20 of the Determination

123. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 1 – Conflict of interest not disclosed to Australian Government agency

Situation

Ann is a registered tax agent and a tax partner at a large tax consulting firm. Ann is asked to participate in a confidential consultation led by an Australian government agency in relation to proposed draft legislation concerning new integrity measures that relate to the tax consolidation rules. If implemented, these rules would apply to clients of the large consulting firm, including Ann's own clients.

Upon receiving the confidential consultation papers, Ann identifies that if the new integrity measures took effect, they would adversely impact the tax affairs of some of her clients. Ann identified that her duty to her clients could be perceived as a material conflict of interest, noting that in the circumstances, there was a potential opportunity for her to financially benefit from her knowledge of those proposed new integrity measures by offering advice to those clients who would be impacted (and potentially new clients) on how they could restructure their affairs before the government agency published the draft legislation. She does not document this conflict of interest, nor disclose it to the government agency. She also takes no steps to manage, mitigate or avoid the conflict of interest, despite the existence of reasonable steps she could have taken to document the conflict of interest, or manage, mitigate, or avoid it.

Breach of section 20 of the Determination

Ann has breached her obligation under section 20 of the Determination.

Ann has identified a material conflict of interest in connection with the activities she is undertaking for the government agency and the duty she owes to the agency to maintain confidentiality. She has failed to document and disclose this conflict to the government agency. In addition, it cannot reasonably be concluded that the government agency expressly provided that Ann could continue to participate in the confidential consultation.

In breaching section 20 of the Determination, Ann is in breach of subsection 30-10(17) of the TASA for failing to document and disclose the conflict of interest to the government agency. Further, if Ann used the confidential information to financially benefit from her knowledge of the proposed new integrity measures, the TPB may also find that Ann is in breach of subsections 30-10(1) of the TASA (failing to act with honesty and integrity) and is no longer a fit and proper person to be registered as a tax practitioner.

Case study 2 – Agency authorises continued engagement following disclosure of conflict of interest

Situation

Max is a registered tax agent and a tax partner at a large accounting firm. Max's clients include several large corporations. Max is an expert in company tax law and is often engaged by his clients to advise on how they may lawfully arrange their tax affairs to reduce tax that they may otherwise be liable for. He also regularly lectures on this topic at several Australian universities and has published numerous peer-reviewed articles on the matter.

Due to his expertise in this field, Max is engaged by The Treasury to assist in the design of several company tax law reform measures.

Max immediately documents and discloses the conflict of interest to The Treasury, advising of the nature and extent of the conflict of interest, and provides a broad overview of the nature of the advice and services he provides to his clients. He discloses to The Treasury that his clients include several large corporations that may be adversely impacted by the proposed reform measures. Further, Max provides The Treasury with an overview of how he intends to manage and mitigate the conflict should the engagement continue, noting that his only option to avoid the conflict is to decline the engagement. He informs The Treasury that he has taken the following steps to manage and mitigate the conflict of interest:

- recorded the conflict of interest on the firm's conflict register,
- reviewed the firm's internal governance policies in relation to conflicts of interest, including the provisions concerning consequences for failing to comply with the procedures, to ensure compliance with those internal policies, and
- ensured that access to information concerning the reform measures is restricted to those who are also assisting in the design of the reform measures (assuming others are engaged to assist in the design of these reforms).

Following the disclosure of the conflict of interest, The Treasury decides to continue with the engagement, noting the mitigating actions taken by Max and Max's expertise in company tax law. The Treasury provides Max with its express written consent to continue with the engagement, providing Max implements appropriate mitigation measures and those measures continue to be consistent with the express consent throughout the engagement.

Conflict of interest

Max has met his obligation in section 20 of the Determination.

Max has appropriately identified, documented, and disclosed the material conflict of interest to The Treasury. He has also provided The Treasury with details of how he intends to

manage and mitigate the conflict of interest, noting that the conflict of interest may only be appropriately avoided if he declined the engagement with The Treasury.

In addition, throughout the engagement with The Treasury, Max at all times acts in a manner consistent with the express consent provided by The Treasury.

Case Study 3 – Conflict of interest considered not material

Situation

John is a registered tax practitioner and expert on the Australian superannuation laws. John is engaged by an Australian government agency to provide advice in relation to a proposed superannuation reform package aimed at improving the fairness, sustainability, flexibility and integrity of the superannuation system. The proposed reforms are intended to apply to all superannuation funds.

John is a member of 123 Super Fund. Although John identifies that there is a conflict of interest given he is a member of a superfund that will be impacted by the proposed reform package, he assesses this conflict as one that is not material in the circumstances. Nonetheless, John documents and discloses the conflict to the government agency.

Conflict of interest

John has met his obligation under section 20 of the Determination.

Although John has identified that the conflict of interest in connection with the activities he is undertaking for the government agency is not material, he has nonetheless documented and disclosed the conflict to the government agency.

Even if John had not disclosed the conflict to the government agency, he would not have breached section 20 of the Determination given the conflict was not material.

Case studies – section 25 of the Determination

124. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 4 – Agency authorises disclosure of information to third party practitioner

Situation

Thomas is a registered tax agent and a tax partner at a mid-sized accounting firm. Thomas is invited to a set of confidential round table discussions led by the Treasury in relation to a proposed increase to tax rates that would largely impact high-wealth individuals. The proposed increase in the tax rates would impact a large portion of the firm's client base.

The invitation to participate in the round table discussions sets out the proposed terms of the engagement, including to whom information received in connection with any activities that Thomas is to undertake for The Treasury may be disclosed. The terms make it clear that a core group of expertise within the firm could be established to participate in the round table discussions and other dialogue in relation to the proposed tax-rate hike, but that the information could not be disseminated further.

Thomas asks two of the firm's partners to participate in the engagement and this is communicated to, and authorised by, The Treasury. Throughout the engagement, Thomas discloses information to the two partners and no further disclosure of the information occurs.

Is there a breach of subsection 25(1) of the Determination?

Thomas has not breached subsection 25(1) of the Determination.

It is reasonable to conclude that the information received in connection with the activities Thomas has undertaken for The Treasury was authorised by the department to be disclosed to the core group, noting in particular the proposed terms of engagement. In addition, Thomas and the core group did not disclose that information further.

Case study 5 – Agency authorises disclosure of information to third party practitioner, but disclosure is inconsistent with that authorisation

Situation

In Case Study 4, Thomas has been authorised to disclose certain information in relation to activities he is undertaking for The Treasury to a core group to be established within his firm. The authorisation provided to Thomas clearly states how that information is to be communicated to this core group, what information can be disseminated, what information is to remain strictly confidential and not for further dissemination to that core group, and for what purpose that information is to be used. Importantly, the authorisation clearly stipulates that any information shared with that core group is to be provided through email only (with a carbon copy (cc) to The Treasury) and not to be provided in printed form.

Thomas asked two of the firm's partners to participate in the engagement. Throughout the engagement, Thomas discloses information to the two partners. On several occasions, Thomas prints emails from The Treasury in relation to the confidential round table discussions, including confidential meeting papers, and provides those to the two partners.

Is there a breach of subsection 25(1) of the Determination?

Thomas has breached subsection 25(1) of the Determination.

It is not reasonable to conclude that the information received in connection with the activities Thomas has undertaken for The Treasury was authorised by the department to be disclosed to the core group in the manner in which it was disclosed, noting that the

authorisation provided to Thomas by The Treasury clearly stipulated that information shared with the core group was to be shared through email only (with a cc to The Treasury).

In breaching subsection 25(1) of the Determination, Thomas is in breach of subsection 30-10(17) of the Code in the TASA for making disclosures of the confidential information in a manner that was not consistent with The Treasury's authorisation.

Case study 6 – Agency does not authorise disclosure of information to third party practitioner

Situation

Isabella is a registered tax agent and a tax partner at a large tax consulting firm. Isabella is asked to participate in a confidential consultation by The Treasury in relation to new measures aimed at improving the tax laws. This confidential consultation included new rules to stop multinationals avoiding tax by shifting profits from Australia to tax havens overseas.

The consultation papers distributed to Isabella were marked “under embargo”. In addition, Isabella was asked to sign a confidentiality agreement as part of her formal engagement. The confidentiality agreement signed by her clearly stipulated that any information received, directly or indirectly, in connection with any activities undertaken for The Treasury in relation to these new measures, is not for further dissemination and that any further disclosure would require the prior authorisation of the government agency.

Throughout the engagement, Isabella made unauthorised disclosures of the confidential law reform to partners and staff within the consulting firm.

Is there a breach of subsection 25(1) of the Determination?

Isabella has breached her obligation under subsection 25(1) of the Determination.

Isabella has disclosed information she received from The Treasury in connection with activities she undertook for the department in her professional capacity. Further, it is not reasonable to conclude in the circumstances that the information received by Isabella was authorised by The Treasury for further disclosure.

In breaching subsection 25(1) of the Determination, Isabella is in breach of subsection 30-10(17) of the Code in the TASA for making unauthorised disclosures of the confidential information. Depending on the circumstances, the TPB may also find that Isabella is in breach of subsections 30-10(1) of the TASA (failing to act with honesty and integrity) and/or that she is no longer a fit and proper person to be registered as a tax practitioner.

Case study 7 – Agency does not authorise use of information for personal advantage

Situation

In Case study 6, during her engagement in the confidential consultation, Isabella became aware that clients of the firm would be impacted by the proposed new measures. Isabella chose to disclose the information received from The Treasury in connection with the activities she was undertaking for the department in her professional capacity for her personal advantage, noting that she stood to gain financially by disclosing the information to the partners of the firm whose clients would be impacted. Similarly, the partners, and others within the firm to whom the confidential information was also disclosed, would gain personally from the unauthorised disclosure, noting the financial benefit that would be gained by informing impacted clients prior to The Treasury publishing the draft legislation.

Is there a breach of subsection 25(2) of the Determination?

Isabella has breached her obligation under subsection 25(2) of the Determination.

In addition to the unauthorised disclosure of confidential information, Isabella has also used this information she received from The Treasury in connection with activities she undertook for The Treasury in her professional capacity for her personal advantage, and the personal advantage of others within the consulting firm. Further, it is not reasonable to conclude in the circumstances that the use of the information received by Isabella was authorised by The Treasury to be used in a way that may provide for such a personal advantage.

In breaching subsection 25(2) of the Determination, Isabella is in breach of subsection 30-10(17) of the TASA, for making unauthorised disclosures of the confidential information for her personal advantage. In the circumstances, it is possible that the TPB may also find that Isabella is in breach of subsections 30-10(1) of the Code in the TASA (failing to act with honesty and integrity) and/or that she is no longer a fit and proper person to be registered as a tax practitioner.

FOR OFFICIAL USE ONLY

MINUTE

NO. 03-2024

Date: 9 July 2024

Assistant Treasurer and Minister for Financial Services

Copies to: Treasury

RELEASE OF DRAFT GUIDANCE TO ASSIST TAX PRACTITIONERS UNDERSTAND NEW OBLIGATIONS UNDER THE TAX AGENT SERVICES (CODE OF PROFESSIONAL CONDUCT) DETERMINATION 2024

Recommendation

That you note the TPB's future release of draft guidance to assist tax practitioners understand their new obligations that are contained in *Tax Agent Services (Code of Professional Conduct) Determination 2024*.

Noted

Signature _____

Date ___/___/___

KEY POINTS

1. On 2 July 2024, the *Tax Agent Services (Code of Professional Conduct) Determination 2024* (Determination) was made by the Minister and introduces 8 additional obligations for registered tax practitioners to comply with. These new obligations commence on 1 August 2024.
2. To support registered tax practitioners in understanding these additional obligations, the TPB has committed to develop new and update existing policy guidance. These guidance products will be supported by extensive stakeholder consultation before finalisation of a TPB position.
3. Release and consultation on draft guidance products will be staggered. This recognises:
 - Existing guidance available through the explanatory statement to the Determination
 - There are 8 additional obligations
 - Stakeholders need sufficient time to provide feedback
 - Competing priorities and resources for stakeholders and the TPB.

4. Consultation on Tranche 1 is expected to commence in the week beginning 15 July 2024 (pending a media release being issued), and will comprise of the following two products:
 - Making false or misleading statements to the TPB or Commissioner (section 15 of the Determination) – see **Attachment A**
 - Conflicts of interest in dealings with government (section 20 of the Determination) and maintaining confidentiality in dealings with government (section 25 of the Determination) – see **Attachment B**
5. The consultation process adopted by the TPB is generally as follows:
 - Step 1: The TPB provide, under embargo, draft documents to the TPB's Governance and Standards Forum (TPGSF) and the TPB's Consultative Forum (CF) to provide any feedback on significant and red line issues (1 week). Membership of these forums is comprised of all the accounting and tax related professional associations.
 - Step 2: Subject to that feedback, the TPB makes appropriate changes and releases the draft documents to the public at large (4 weeks). This is an opportunity for professional associations and others to make any formal submission.
 - Step 3: Subject to that feedback, the TPB will seek to finalise its guidance as soon as possible (generally 6 weeks after submissions close).
6. Throughout the above consultation process, the TPB will be engage with Treasury, the Australian Taxation Office and other government agencies, as appropriate.

BACKGROUND

7. The *Tax Agent Services Act 2009* (TASA) contains the Code of Professional Conduct (Code), comprising of 17 Code obligations to which registered tax practitioners must comply. Code Item 17 (subsection 30-10(17) of the TASA) requires that registered tax practitioners comply with obligations determined by the Minister under subsection 30-10(12) of the TASA.
8. The Determination has been made pursuant to subsection 30-10(12) of the TASA and introduces 8 additional obligations for registered tax practitioners to comply with.
9. These new obligations were subject to a 6-week Treasury consultation in mid-December 2023, which included a roundtable discussion with the TPB's TPGSF and CF. These consultations helped to inform and improve the final Determination.

EXPLANATION

10. Table 1 below outlines the TPB's approach to the consultation and release of new and updated policy guidance supporting the new obligations contained in the Determination.

Table 1: Staged approach to issuing guidance

Tranche	Proposed date to commence consultation	New additional Code obligations	Product type
1	Mid to late July	<ul style="list-style-type: none"> False or misleading statements (section 15 of the Determination) 	New product
		<ul style="list-style-type: none"> Conflicts of interest in dealings with government (section 20 of the Determination) Maintaining confidentiality in dealings with government (section 25 of the Determination) 	New product
2	Early September	<ul style="list-style-type: none"> Ensuring tax agent services provided on your behalf are provided competently (section 35 of the Determination) Quality management systems (section 40 of the Determination) 	Update existing product
		<ul style="list-style-type: none"> Keeping of proper client records (section 30 of the Determination) 	New product
3	Early November	<ul style="list-style-type: none"> Keeping your clients informed of all relevant matters (section 45 of the Determination) 	New product
		<ul style="list-style-type: none"> Upholding and promoting the ethical standards of the tax profession (section 10 of the Determination) 	New product

FURTHER INFORMATION

11. If you would like any further information, please contact me on [REDACTED] or at [REDACTED]

Janette Luu



Acting CEO and Secretary
Tax Practitioners Board

TPB Information sheet

TPB(I) DXX/2024

False or misleading statements to the TPB or Commissioner

Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of subsection 30-40 of *Tax Agent Services Act 2009*.

While this draft TPB(I) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the TASA. In addition, please note that the principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law.

Document history

This draft TPB(I) was issued on [DATE] [MONTH] [YEAR] and is based on the TASA as at [DATE] [MONTH] [YEAR]

Issued: [DATE] [MONTH] [YEAR]

False or misleading statements to the TPB or Commissioner

Introduction

- 1) This draft Information sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to assist registered tax practitioners to understand their obligations under section 15 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023* (Determination) and section 50-20 of the *Tax Agent Services Act 2009* (TASA).
- 2) In this TPB(I), you will find information on:
 - Background to the legislative requirements (paragraphs 3 to 6)
 - Making or preparing (or permitting or directing another to make or prepare) false or misleading statements to the TPB or Commissioner (paragraphs 7 to 21)
 - Correcting a false or misleading statement made to the TPB or Commissioner (paragraphs 22 to 25)
 - Statements made to other Australian government agencies (paragraphs 27 to 29)
 - Civil penalties and criminal liability for making false and misleading statements (paragraphs 30 to 36)
 - Consequences for failing to comply under the TASA (paragraphs 37 to 41)
 - Case studies (paragraph 42)
 - Further information (paragraph 43).

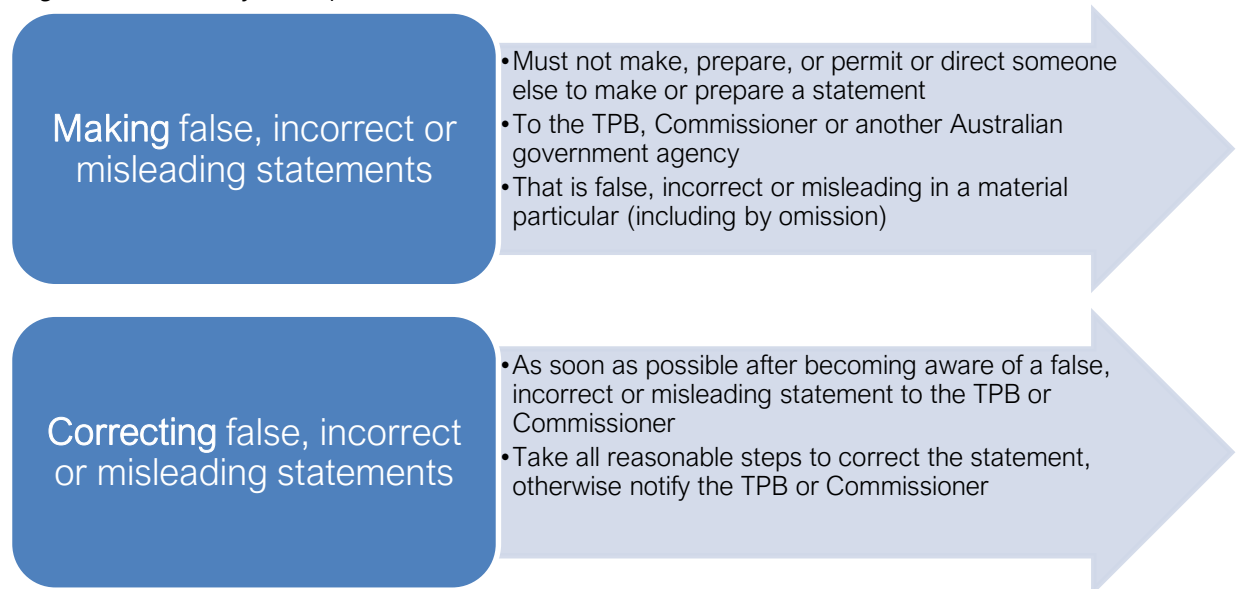
Background

- 3) Section 30-10 of the TASA contains the Code of Professional Conduct (Code), comprising 16 items which regulate the personal and professional conduct of all registered tax practitioners.
- 4) In addition to the Code registered tax practitioners must comply with any obligations determined by the Minister under section 30-12 of the TASA.¹ On **1 July 2024**, the Determination introduced an additional 8 obligations. A breach of any of the obligations contained in the Determination will be a breach of the Code and subsection 30-10(17) of the TASA.
- 5) This draft TPB(I) deals with one of these additional obligations under the Determination in relation to false or misleading statements. It also includes relevant guidance for registered tax practitioners regarding other false and misleading statement requirements under the TASA.
- 6) The obligations in relation to false or misleading statements under the Determination has 2 aspects, requiring registered tax practitioners to:

¹ Subsection 30-10(17) of the TASA.

- not make or prepare, or permit or direct someone else to make or prepare, false, incorrect or misleading statements to:
 - i) the TPB;
 - ii) the Commissioner of Taxation (Commissioner); or
 - iii) another Australian government agency
- in relation to statements to the TPB or Commissioner, correct any statement given that is false, incorrect or misleading (or where a tax practitioner prepared the statement or permitted or directed someone else to prepare the statement, advise the maker of the statement that the statement should be corrected, otherwise notify the TPB or Commissioner).

Figure 1: Summary of requirements of section 15 of the Determination



Making or preparing (or permitting or directing another to make or prepare) false or misleading statements

7) Subsection 15(1) of the Determination provides that registered tax practitioners must not:

- make a statement to the TPB or the Commissioner, or
- prepare a statement that they know, or ought reasonably to know, is likely to be made to the TPB or Commissioner by an entity, or
- permit or direct someone else to make or prepare such a statement,

that the registered tax practitioner knows, or ought reasonably to know:

- is false, incorrect or misleading in a material particular, or

- omits any matter or thing without which the statement is misleading in a material respect,

in their capacity as a registered tax practitioner or in any other capacity.

- 8) The nature of this obligation is one of truthfulness and integrity.² The provision is concerned with particulars that are material in nature. This means that false or misleading particulars that are trivial in the circumstances will not constitute a breach of section 15 of the Determination.³
- 9) Expanding this obligation to include statements made in a tax practitioner's personal and professional activities highlights the importance of a tax practitioner's role in representing the tax profession and preserving public confidence in the tax system, particularly when making representations to the TPB or Commissioner for their own or their clients' tax affairs.⁴
- 10) The key elements of the obligations under section 15 of the Determination are explained further below.

‘Statement to the TPB or Commissioner’

11) Consistent with the concept of a ‘false or misleading statement’ in respect of the administration of penalties by the Commissioner under the *Taxation Administration Act 1953* (TAA),⁵ a statement for the purposes of the TASA is anything that is disclosed for a purpose connected with a taxation law orally or in writing (and includes those made electronically). A statement includes the following:

- statements prepared for, or made in, correspondence, a registration and/or application form, any taxation document,⁶ an activity statement, an amendment request or any other communication; and
- statements made by omission, if an entity fails to include material information in a document that requires that information to be supplied.

12) Where a tax practitioner lodges a form, the form itself is not the statement that is prepared or made. The statement is the information at the individual labels, fields or questions, schedules or annexures. This means more than one statement can be prepared for, or made on, a form. Further, a statement prepared for or provided to the Commissioner includes a statement provided to the Australian Taxation Office (ATO).

² Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

³ Ibid.

⁴ Ibid.

⁵ Section 284-75 of the *Taxation Administration Act 1953* (TAA) imposes penalties under various circumstances where an entity (or their agent) makes a false or misleading statement to the Commissioner or other entities in limited circumstances.

⁶ A *taxation document* in this context means any return, notice, statement or other document given to the Commissioner in the *approved form within the meaning of section 388-50 in Schedule 1 to the TAA.

13) In addition to statements prepared for or made to the Commissioner, subsection 15(1) of the Determination also captures statements prepared for or made to the TPB. This could include statements prepared for or made to the TPB:

- under the notification requirements contained in sections 30-35 and 30-40 of the TASA⁷
- in response to formal and informal information requests made by the TPB
- by tax practitioners through MyProfile, for instance, in providing information relevant to a tax practitioner's registration that may or may not be published on the TPB's Public Register
- in any other communication.

14) The statement to the TPB or Commissioner will also be caught if a tax practitioner permits or directs someone else to make or prepare such a statement. This could include, for example:

- statements that a tax practitioner permits to be made by individuals working under the supervision and control of the tax practitioner; and
- statements that a tax practitioner directs another individual (such as another tax practitioner, a client, employee or any other person) to make.

'Know or ought reasonably to know'

15) The phrase 'know or ought reasonably to know' has two elements. The term "know" refers to actual knowledge. The phrase "ought reasonably to know" extends to 'constructive knowledge', where a person is taken to have knowledge about a matter, if the existence of that matter could be discovered by a reasonable person in the same position as the person, making reasonable enquiries.

16) A registered tax practitioner must therefore take reasonable steps and make reasonable enquiries to ensure that a statement being prepared for, or made to, the TPB or Commissioner, or that the registered tax practitioner is permitting or directing to be made or prepared by someone else to the TPB or Commissioner, is not false, incorrect, or misleading in a material particular.

17) It will generally be expected that a registered tax practitioner has a complete and comprehensive understanding of matters that relate to their own (personal) affairs and those in their professional capacity, when preparing or making statements to the TPB or Commissioner, or permitting or directing someone else to prepare or make statements to the TPB or Commissioner.

18) In terms of preparing or making a statement to the TPB or Commissioner on behalf of a third party or permitting or directing such a statement to be prepared or made, for example a client or a disqualified entity (when seeking TPB approval), the factors applicable to whether

⁷ Further information in relation to notification requirements for tax practitioners is provided in [TPB\(I\) D53/2023 Obligation to notify actual and potential breaches of the Tax Agent Services Act 2009](#)

or not the registered tax practitioner ought reasonably to know that the statement is false, incorrect or misleading will depend on the circumstances and will generally be consistent with the principles in the Code item under subsection 30-10(9) of the TASA, relating to taking reasonable care to ascertain a client's state of affairs.⁸

19) The extent to which a registered tax practitioner should make reasonable enquiries or take reasonable steps to substantiate information or statements it is preparing for or making to the TPB or Commissioner, or permitting or directing someone else to prepare for or make to the TPB or Commissioner, will be proportionate to the materiality of the matter that the statement or information is relating to. This will require the registered tax practitioner to use their professional judgement, having regard to the circumstances, including the following factors:

- whether the statement relates to satisfying a legal obligation, for example, meeting the tax practitioner registration requirements or satisfying other obligations under the Code and the TASA or other taxation laws
- if the statement is based on information provided by a third party, how familiar the registered tax practitioner is with the third party, and whether the third party is a credible source of information
- if the statement is based on information provided by a third party, whether the information is consistent with previous information provided by that third party
- the ability of the information or statement to be verified by an independent source
- the consequences for the registered tax practitioner, third party (if relevant), TPB, Commissioner, and tax system more generally, if the statement being made is incorrect.

‘False, incorrect or misleading in a material particular’

20) Tax practitioners are required to ensure that statements that they make to, or prepare for, the TPB or Commissioner, or that they permit or direct to be made to, or prepared for, the TPB or Commissioner, are not false or misleading in a material particular. The concepts of ‘false statements’, ‘incorrect statements’, ‘misleading statements’ and ‘material particulars’ are further explained below.

False statements

- a statement is false if it is contrary to fact or wrong
- a statement may be false because of something contained in the statement or because something is omitted from the statement
- if a statement was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law, it is not later considered false (or misleading).

⁸ Further information in relation to what it means to take reasonable care to ascertain a client's state of affairs is provided in [TPB\(I\) 17/2013 Code of Professional Conduct – Reasonable care to ascertain a client's state of affairs](#).

Incorrect statements

- a statement is incorrect if it is not in accordance with fact, or wrong.

Misleading statements

- a statement is misleading if it creates a false impression, even if it is literally true
- it may be misleading because of something contained in the statement or because of something omitted from the statement
- the reason the statement is misleading may be because it is uninformative, unclear or deceptive.

In a material particular

- whether a particular is 'material' will depend on the circumstances but generally speaking, a material particular is something that is likely to be relevant to an entity's obligations or entitlements under the TASA or taxation law more generally
- an inconsequential statement which is minor in nature and does not affect an entity's legal obligations or entitlements will generally not be a material particular for the purposes of section 15 of the Determination
- materiality is determined at the time the statement is made - a statement cannot be made material because of subsequent events
- however, materiality may be unknown until a subsequent event occurs or further evidence comes to light which reveals that the statement was false or misleading in a material particular at the time it was made. In such a case, registered tax practitioners are required to correct the false or misleading statement (refer to paragraphs 22 to 26 below).

Omits any matter or thing without which the statement is misleading in a material respect

21) The obligation in section 15 of the Determination extends to the omission of any matter or thing without which the statement is misleading in a material respect. Whether or not the omission of a matter results in a statement being misleading in a material respect will depend on the circumstances including consideration of whether the statement is likely to be relevant to an entity's obligations or entitlements under the TASA or taxation law more generally.

Correcting a false or misleading statement to the TPB or Commissioner

22) Subsection 15(2) of the Determination requires registered tax practitioners, as soon as possible after the registered tax practitioner becomes aware that a statement given to the TPB or Commissioner was false, incorrect or misleading in a material particular (at the time that it was made), or omitted any matter or thing without which the statement is misleading in a material respect, to take all reasonable steps to:

- where the statement was **made** by the registered tax practitioner (or the registered tax practitioner permitted or directed someone else to make the statement) – correct the statement;
- where the registered tax practitioner **prepared** the statement (or permitted or directed someone else to prepare the statement) – advise the maker of the statement that the statement should be corrected; and
- where the registered tax practitioner prepared the statement **and the maker does not correct the statement** within a reasonable time – notify the TPB or Commissioner that the statement is false, incorrect or misleading in a material particular, or omits a matter or thing without which the statement is misleading in a material respect.

23) It is important to note that the requirement to correct applies **as soon as possible** after registered tax practitioners become aware of the false, incorrect or misleading statement.

24) Registered tax practitioners notifying the TPB or Commissioner that a statement previously provided to the TPB or Commissioner is false, incorrect or misleading in a material particular will not be in contravention of the confidentiality requirements in Code item 6 under subsection 30-10(6) of the TASA⁹ because registered tax practitioners have a legal duty to correct such statements under subsection 15(2) of the Determination.

25) While subsection 15(2) does not require registered tax practitioners to take action in relation to a statement that was not false, incorrect or misleading at time it was made, but later becomes false or misleading because of some later event, registered tax practitioners must ensure that subsequent statements made to the TPB or Commissioner are not false, incorrect or misleading in a material particular, and must comply with all other obligations under the TASA, for example, the requirement to notify the TPB about changes in circumstances¹⁰ and breach reporting.¹¹

26) The requirement to correct encourages registered tax practitioners to be accountable and make corrections to ensure the TPB and Commissioner have access to the most accurate information. Correcting information also displays the goodwill of the tax practitioner and may be factored into any potential sanctions pursued by the TPB for breach of the Code.

Statements made to other Australian government agencies

27) Subsection 15(3) of the Determination extends similar obligations under subsection 15(1) in relation to making or preparing, or permitting or directing someone else to make or prepare, false, incorrect or misleading statements to other Australian government agencies.

⁹ Subsection 30-10(6) of the TASA provides that unless they have a legal duty to do so, registered tax practitioners must not disclose any information relating to a client's affairs to a third party without the client's permission.

¹⁰ Further information about the requirement of tax practitioners to notify the TPB of certain changes to their circumstances can be found at tpb.gov.au/change-registration-details-or-circumstances

¹¹ Further information in relation to notification requirements for tax practitioners is provided in [TPB\(I\) D53/2023 Obligation to notify actual and potential breaches of the Tax Agent Services Act 2009](#)

28) This obligation applies to statements made or prepared by a registered tax practitioner in any capacity.

29) 'Australian government agency' is defined in section 995-1 of the *Income Tax Assessment Act 1997* as the Commonwealth, State or Territory, or an authority of the Commonwealth, State or Territory. They include the Australian Securities and Investments Commission, Department of the Treasury and the Australian Competition and Consumer Commission.

Civil penalties and criminal liability for making false or misleading statements

30) In addition to the requirements contained in section 15 of the Determination, registered tax practitioners may also be subject to civil penalties and criminal liability for making, preparing or permitting or directing the making or preparing of false or misleading statements to the Commissioner.

Civil penalty liability under the TASA

31) Section 50-20 of the TASA prohibits registered tax practitioners from knowingly or recklessly (by inclusion or omission):

- making a false or misleading statement to the Commissioner
- preparing a false or misleading statement which the registered tax practitioner knows, or ought reasonably to know is likely to be made to the Commissioner
- permit or direct an entity to make or prepare a false or misleading statement to the Commissioner.

Criminal liability under sections 8K and 8N of the TAA

32) Section 8K of the TAA makes it an offence for a person to make a statement that is false or misleading in a material particular to a taxation officer, including where the statement is misleading in a material particular due to an omission. In the prosecution of an entity for an offence under section 8K of the TAA, it is a defence if the entity proves that they did not know and could not reasonably be expected to have known that the statement was false or misleading.¹²

33) Section 8N of the TAA makes it an offence for a person to recklessly make a statement that is false or misleading in a material particular to a taxation officer, including where the statement is misleading in a material particular due to an omission.

34) These offences are of 'absolute liability'¹³. The penalties imposed for offences under section 8K and 8N are set out in sections 8M and 8R of the TAA and will depend on the type of

¹² Subsection 8K(2) of the TAA.

¹³ An offence of 'absolute liability' is an offence where no fault elements apply to the physical elements of the offence and the defence of reasonable mistake is not available: section 6.2 of the *Criminal Code Act 1995* (Cth), which applies to offences under the TAA.

registered tax practitioner entity that has committed the offence (individual or corporation), and whether there have been any previous offences.

Penalties imposed by the ATO under Schedule 1 to the TAA

- 35) Section 284-75 in Schedule 1 to the TAA imposes penalties at law in circumstances where an entity or their agent makes a statement to the Commissioner or another entity exercising powers or performing functions under a taxation law, and the statement is false or misleading in a material particular, whether because of things in it or omitted from it.¹⁴
- 36) An entity will be liable for the penalty for a statement they or their authorised representatives (including tax agents, BAS agents, authorised employees or other agents¹⁵) make on their behalf. If an agent (including a registered tax practitioner) exceeds the scope of their authority when making a statement and the entity can prove that responsibility for that statement lies with the agent, the penalty may be imposed on the agent.¹⁶

Consequences for failing to comply under the TASA

- 37) A breach of any of the requirements in the Determination will constitute a breach of the Code under subsection 30-10(17) of the TASA.
- 38) If the TPB finds that a registered tax practitioner has breached the Code, the TPB may impose one or more of the following sanctions:
- a written caution
 - an order requiring the registered tax practitioner to do something specified in the order
 - suspension of the registered tax practitioner's registration
 - termination of the registered tax practitioner's registration
 - a period within which a terminated tax practitioner may not re-apply for registration.
- 39) If the TPB finds that a registered tax practitioner has failed to meet an ongoing tax practitioner registration requirement (for example, by no longer being a fit and proper person), the TPB may terminate the tax practitioner's registration.
- 40) If an individual or entity is found by the TPB to have contravened a civil penalty provision of the TASA (for example, section 50-20), the TPB may apply to the Federal Court of Australia for a civil penalty to be imposed on that individual or entity.

¹⁴ Subsections 284-75(1) and (4) in Schedule 1 to the TAA imposes numerous penalties relating to the making of false and misleading statements in various circumstances.

¹⁵ Under commercial law, an agent is a person who is either expressly or impliedly authorised by a principal to act for that principal so as to create or effect legal relations between the principal and third parties. An act done by the agent on behalf of the principal is considered an act of that principal.

¹⁶ Further information in respect of the Commissioner's administration of these penalty provisions can be found in [Practice Statement Law Administration PS LA 2012/4 Administration of the false or misleading statement penalty – where there is no shortfall amount](#) and [Practice Statement Law Administration PS LA 2012/5 Administration of the false or misleading statement penalty – where there is a shortfall amount](#).

- 41) Ultimately, determining whether a registered tax practitioner has contravened the TASA will be a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.

Case studies

- 42) These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 1 – tax practitioner makes a false statement to the TPB in a material matter

Lottie is the sole director of registered BAS agent company, OSH Pty Ltd.

One of OSH Pty Ltd's employees, Skye, is the only registered BAS agent individual that makes up the sufficient number requirement for OSH Pty Ltd. Skye advises Lottie and the TPB that she is resigning from her employment at OSH Pty Ltd to start her own registered BAS agent business.

After receiving notification from Skye that she will no longer be employed OSH Pty Ltd, the TPB contacts Lottie to clarify whether there are any other individual registered tax or BAS agents engaged by OSH Pty Ltd for the purposes of meeting the sufficient number requirement for OSH Pty Ltd's BAS agent registration.

Worried that Skye's resignation will mean that OSH Pty Ltd will lose its registration, and noting that she intends to gain individual BAS agent registration within the coming months, Lottie falsely provides the name and registration number of another registered BAS agent individual as being engaged by OSH Pty Ltd in order to meet the sufficient number registration requirement.

The provision of the false statement on behalf of OSH Pty Ltd is material, as it relates to OSH Pty Ltd's ongoing eligibility as a registered BAS agent.

In breaching subsection 15(1) of the Determination, OSH Pty Ltd is in breach of subsection 30-10(17) of the TASA, as well as subsection 30-10(1) of the TASA, for failing to act with honesty and integrity. Having regard to the circumstances surrounding Lottie's conduct as a director of OSH Pty Ltd, the TPB may also find that Lottie is not a fit and proper person to be a director of a registered BAS agent company.

Case study 2 – tax practitioner makes a misleading statement to the TPB by omitting a material particular

Esther is a registered tax agent, operating as an individual sole practitioner.

In seeking to renew her tax agent registration, Esther completes the online renewal form, declaring that she continues to meet the ongoing registration requirements. However, Esther was recently declared an undischarged bankrupt, which is an event affecting her continued registration, and a matter that she is required to advise the TPB about.

Esther's omission of her status as an undischarged bankrupt is material, as it relates to her ongoing eligibility as a registered tax agent.

In breaching subsection 15(1) of the Determination, Esther is in breach of subsection 30-10(17) of the TASA, as well as subsection 30-10(1) of the TASA, for failing to act with honesty and

integrity. Having regard to the circumstances surrounding Esther's conduct, the TPB may also find that Esther is not a fit and proper person to be registered as a tax agent.

Case study 3 – tax practitioner ought reasonably to have known that a statement is false in a material particular

Archie was approached by Carter to provide tax agent services to 10 individuals. Carter purported to have authority from the individuals to engage Archie to lodge income tax returns on behalf of the individuals, however Archie did not ask for any proof of identity documentation to verify the identities of the individuals nor did he take any steps to verify Carter's identity and authority to represent the individuals. Archie noticed that there were discrepancies in the payment summaries provided by Carter for the individuals, and that the bank account details provided by Carter for some individuals were exactly the same as the bank account details provided for others.

In this scenario, Archie ought to reasonably have known that statements he made to the ATO on behalf of the individuals were false in a material particular, being the identities of the individuals making lodgements (and by extension, likely the information being included in the income tax returns). A reasonable tax practitioner in Archie's circumstances would have undertaken proof of identity checks prior to making the lodgements on behalf of the individuals, including verifying the authority for Carter to engage him on behalf of the individuals.

Upon ATO review activity, it was found that the claims made on behalf of the individuals were fraudulent, and Carter did not have the authority to engage Archie to lodge income tax returns on behalf of them.

Archie is in breach of subsection 15(1) of the Determination for making false and incorrect statements to the Commissioner when he ought to reasonably have known that the statements made were false in material particulars. He is also in breach of subsection 30-10(7) of the TASA, for failing to provide services competently, and subsection 30-10(9) of the TASA, for failing to take reasonable care to ascertain his clients' state of affairs. Depending on the circumstances, the TPB may also find that Archie is not a fit and proper person to be registered as a tax practitioner.

Case study 4 – tax practitioner corrects a false statement previously made to the TPB

Ella, a registered BAS agent, advised the TPB that she was covered by the professional indemnity insurance policy taken out by her employer company FinTax Pty Ltd, and provided the TPB with a policy number and expiry date that she believed was the professional indemnity insurance policy that she was covered by.

Upon undertaking an annual review of FinTax Pty Ltd's insurance policies, it became apparent that Ella was not actually covered by the professional indemnity insurance policy held by the company. As such, statements made by FinTax Pty Ltd and Ella regarding meeting the TPB's professional indemnity insurance requirements and accompanying policy details were false.

FinTax Pty Ltd promptly updated its professional indemnity insurance policy to ensure that the provision of tax agent services by all employees and contractors on behalf of the company are covered, and FinTax Pty Ltd and Ella subsequently advised that the TPB of the false statements that had previously been provided, and the new and correct professional indemnity insurance details.

While this conduct by FinTax Pty Ltd and Ella gave rise to breaches of subsection 15(1) of the Determination and subsection 30-10(13) of the TASA (failing to maintain professional indemnity

insurance that meets the TPB’s requirements), due to the goodwill of Ella and Fintax Pty Ltd correcting the false statement and ensuring compliance with the TPB’s professional indemnity insurance requirements going forward, the TPB decided to take no further action against Ella and issued Fintax Pty Ltd with a written caution as a result of the breaches found.

Case study 5 – tax practitioner makes a false and misleading statement to the Commissioner on behalf of their client, that they knew was false in a material particular

Julian, a registered tax agent, was identified by the ATO as having high work-related expense (WRE) claims across his client base. Over 100 client audits were completed, and during the audits, the types of behaviours noted by the ATO demonstrated that Julian made statements to the Commissioner that were incorrect, and contrary to the information available to him.

Examples included:

- Julian was unable to substantiate claims made for his clients, and his working papers did not support deductions claimed in the returns.
- Car expenses were claimed without logbooks having been kept.
- Self-education expenses were claimed where the employer had reimbursed or paid directly for the expense.
- Inappropriate medical expenses were claimed.
- Home office claims, where there was no evidence that the client worked from home.

Through the ATO’s audit activity, including by interviewing Julian’s clients, it became clear that the clients had provided all relevant and accurate information and records to Julian when engaging him to complete their income tax returns.

Julian is in breach of subsection 15(1) of the Determination by preparing statements to the Commissioner that he knew to be false in a material particular/s.

Further information

- 43) Outlined below is a listing of reference material that may provide further guidance in relation to issues to consider in relation to false and misleading statements:

Agency	Information product	Purpose of document
Tax Practitioners Board	TPB(I) D53/2023 Obligation to notify actual and potential breaches of the Tax Agent Services Act 2009	Assists registered tax practitioners understand the breach reporting obligations under sections 30-35 and 30-40 of the TASA, which apply from 1 July 2024.
	TPB(I) 17/2013 Code of Professional Conduct – Reasonable care to ascertain a client’s state of affairs	Provide guidance in relation to what it means to take reasonable care under subsection 30-10(9) of the TASA.

	<p>Website guidance: tpb.gov.au/change-registration-details-or-circumstances</p>	<p>Further information about the requirement of tax practitioners to notify the TPB of certain changes to their circumstances.</p>
ATO	<p>Practice Statement Law Administration PS LA 2012/4 Administration of the false or misleading statement penalty – where there is no shortfall amount</p>	<p>Further information in respect of the Commissioner's administration of penalty provisions in section 284-75 in Schedule 1 to the TAA.</p>
	<p>Practice Statement Law Administration PS LA 2012/5 Administration of the false or misleading statement penalty – where there is a shortfall amount.</p>	<p>Further information in respect of the Commissioner's administration of penalty provisions in section 284-75 in Schedule 1 to the TAA.</p>
	<p>Miscellaneous Taxation Ruling MT 2008/1 Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard</p>	<p>Provides the Commissioner's interpretation of the concepts 'reasonable care', 'recklessness' and 'intentional disregard' as used in Subdivision 284 B and 'intentional disregard' and 'recklessness' as used in subsection 286 75(1A) of Schedule 1 to the TAA.</p>

TPB Information Sheet

TPB(I) DX/2024

Code of Professional Conduct – Maintaining independence and confidentiality in dealings with government

Disclaimer

This document is in draft form, and when finalised, will be intended as information only. It provides information regarding the TPB's position on the application of sections 20 and 25 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023* (the Determination).

While this draft TPB(I) seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA). In addition, please note that the principles, explanations and examples in this draft TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law. Please refer to the TASA and the Determination for the precise content of the legislative requirements.

Document history

This draft TPB(I) was issued on [DATE] [MONTH] [YEAR] and is based on the TASA as at [DATE] [MONTH] [YEAR].

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Maintaining independence and confidentiality in dealings with government

Introduction

1. This draft Information sheet (draft TPB(I)) has been prepared by the Tax Practitioners Board (TPB)¹ to assist registered tax and BAS agents (collectively referred to as 'registered tax practitioners') to understand their obligations under the following:
 - section 20 of the *Tax Agent Services (Code of Professional Conduct) Determination 2023* (Determination)², and
 - section 25 of the Determination³.
2. While the focus of this draft TPB(I) is on the obligations in sections 20 and 25 of the Determination, it is also important to note that there are also 17 obligations in the Code of Professional Conduct (Code)⁴, additional obligations in the Determination, and further requirements that registered tax practitioners must comply with under the TASA. These include ongoing requirements in relation to maintaining registration under the TASA, including that a tax practitioner is a 'fit and proper' person⁵. Further, the obligations in this draft TPB(I) are in addition to obligations 5 and 6 of the Code (which relate to managing conflicts of interest and maintaining confidentiality).
3. The obligations seek to outline the high professional and ethical standards expected by the community of individual tax practitioners, with the objective of:
 - improving transparency and accountability,
 - protecting public trust and confidence in the integrity of the tax profession and the tax and superannuation system more broadly, and
 - strengthening the regulatory framework and the regulation of the tax profession.
4. In this TPB(I), you will find the following information:

¹ The TPB administers a system for the registration of tax agents and BAS agents (known collectively as 'tax practitioners') under the *Tax Agent Services Act 2009* (TASA).

² The TPB has also published specific information regarding the obligations of registered tax practitioners under subsection 30-10(5) of the TASA, including [TPB\(I\) 19/2014 Code of Professional Conduct – Managing conflicts of interest](#).

³ The TPB has also published specific information regarding the obligations of registered tax practitioners under subsection 30-10(6) of the TASA, including [TPB\(I\) 21/2014 Code of Professional Conduct – Confidentiality of client information](#).

⁴ The provisions of the Code are contained in section 30-10 of the TASA. The TPB has also published an explanatory paper that sets out its views on the application of the Code, including Code obligations 5 and 6. Refer to TPB Explanatory paper [TPB\(EP\) 01/2010 Code of Professional Conduct](#).

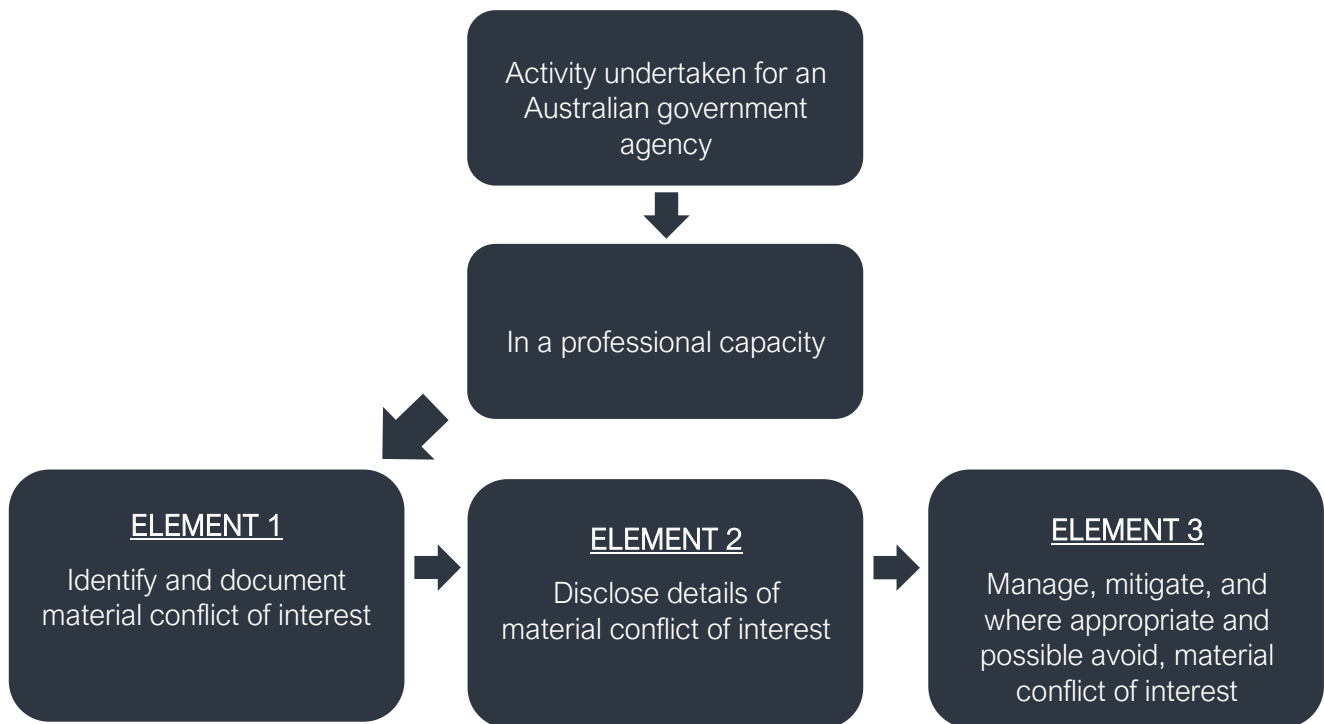
⁵ For further information, see TPB Explanatory paper [TPB \(EP\) 02/2010 Fit and proper person](#).

- Background to the legislative requirements (paragraphs 5 to 8)
- Details of the obligation under section 20 (paragraphs 9 to 61)
- Details of the obligation under section 25 (paragraphs 62 to 108)
- Consequences for failing to comply with the obligations under sections 20 and 25 (paragraphs 108 to 113)
- Case studies (paragraph 123).

Background

5. Section 30-10 of the TASA contains the Code, comprising of 17 obligations which regulate the personal and professional conduct of registered tax practitioners.
6. One of these obligations is contained in subsection 30-10(17) of the TASA, which requires registered tax practitioners to comply with any obligations that the Minister determines, by legislative instrument, under section 30-12 of the TASA.
7. On **XX MONTH** 2024, the Minister determined eight additional Code obligations, set out in the Determination, under section 30-10 of the TASA. A breach of any of the obligations contained in the Determination will be a breach of subsection 30-10(17) of the Code.
8. This draft TPB(I) deals with two of these additional Code obligations set out in the Determination which relate to independence and confidentiality. More specifically, these obligations concern the management of conflicts of interest and maintaining confidentiality in dealings with Australian government agencies in a tax practitioner's professional capacity.

What is the obligation under section 20?



9. Section 20 of the Determination requires registered tax practitioners, in relation to any activities they undertake for an Australian government agency in a professional capacity, to:
- take reasonable steps to identify and document any material conflict of interest (real or apparent) in connection with an activity undertaken for the agency,
 - disclose the details of any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency to the agency as soon as the registered tax practitioner becomes aware of the conflict, and
 - take reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency (except to the extent that the agency has expressly agreed otherwise).⁶
10. The obligation is intended to assist in minimising potential adverse impacts to Australian government agencies where a tax practitioner has a conflict of interest in connection with an activity undertaken for an Australian government agency. This in turn helps to achieve the objectives outlined at paragraph 3 above.

⁶ It is noted that as at the date of publication of this draft TPB(I), the Government completed consultation on a draft Commonwealth Supplier Code of Conduct which is aimed at further strengthening integrity and ethical conduct in Government operations and those of its suppliers. This Code is expected to come into effect in mid-2024.

11. Section 20 does not prohibit registered tax practitioners from having conflicts of interest. Rather, it creates an obligation on tax practitioners to appropriately *manage* and *mitigate* conflicts of interest that arise, or may arise, in relation to activities that they undertake for an Australian government agency in their professional capacity. Where possible and appropriate, reasonable steps must be taken to avoid conflicts unless the Australian government agency has expressly agreed to accept a particular conflict in specific circumstances.
12. In addition, section 20 creates a positive obligation on registered tax practitioners to disclose the details of the conflict to the government agency as soon as the tax practitioner becomes aware of the conflict.
13. In circumstances where a registered tax practitioner identifies and discloses a material conflict of interest to an Australian government agency, the continued engagement by the agency of the tax practitioner will be at the discretion of the agency having regard to the nature of the conflict and any steps taken by the practitioner to manage or mitigate the conflict. This recognises that Australian government agencies should be able to engage appropriate expertise who act independently and with integrity in undertaking activities to assist Government in shaping the Australian taxation and superannuation system.
14. It is also noted that the Accounting Professional and Ethical Standards Board (APESB) has released [APES 110 Code of Ethics for Professional Accountants](#) (APES 110) and [APES 220 Taxation Services](#) (APES 220), which apply to members of relevant professional bodies that have adopted it. While not binding on all registered tax practitioners, these standards provide useful guidance on what steps a tax practitioner can take to ensure the tax practitioner has adequate arrangements in place for the management of conflicts of interest that may arise in relation to activities that are undertaken in the capacity of a registered tax practitioner. APES 110 notes, among other things, that a member is required to not allow conflict of interests to override professional or business judgments,⁷ while *APES 220 Taxation Services* also outlines requirements as to objectivity.

Activities undertaken for an Australian government agency in tax practitioner's professional capacity

15. The obligation under section 20 of the Determination applies to activities undertaken by a registered tax practitioner for an Australian government agency in the tax practitioner's professional capacity, whether paid or otherwise.
16. 'Australian government agency' is defined in section 995-1 of the *Income Tax Assessment Act 1997* as the Commonwealth, a State or a Territory, or an authority of the Commonwealth, or of a State or a Territory. Examples include the Department of the Treasury, Tax Practitioners Board, Australian Taxation Office, Australian Securities and

⁷ See APES 110 *Code of Ethics for Professional Accountants*, sections 100, 220 and 310 on the Accounting Professional & Ethical Standards Board website at www.apesb.org.au

Investments Commission, Australian Competition and Consumer Commission, Department of Education and Training Victoria, and NSW Health.

17. Broadly, the term 'professional capacity' would include activities undertaken by the registered tax practitioner:
 - in their capacity as a registered tax practitioner, and
 - in any other skilled or expert capacity where the relevant activities fall outside of the definition of a tax agent service⁸ or BAS service⁹.
18. Practically speaking, this includes providing any advice, assistance, or feedback to the government, whether paid or otherwise. However, it does not extend to activities or interactions that are of a personal nature.¹⁰
19. Expanding the obligation to activities outside of those undertaken in an entity's capacity as a registered tax practitioner highlights the importance of the tax practitioner's role in representing the tax profession and gives the public greater confidence and assurance in the integrity of the profession.¹¹
20. Relevant activities that a registered tax practitioner may undertake in their professional capacity may include, but are not limited to, the following:
 - providing expert advice, assistance, or feedback on technical and professional matters, including potential legislative changes
 - providing advice, assistance, or feedback on strategy
 - providing accounting and/or information technology (IT) services
 - undertaking research activities, such as attitudinal surveys and feasibility studies
 - overseeing government functions.
21. The TPB is of the view that these activities may be undertaken through either a formal engagement (such as through a procurement process, or a confidential consultation process) or an informal engagement (which may include internal meetings and discussions, or informal consultation processes).

⁸ For more information in relation to the definition of a tax agent service, see [TPB Information Sheet TPB\(I\) 39/2023 What is a tax agent service?](#).

⁹ For more information in relation to the definition of a tax agent service, see [TPB Information Sheet TPB\(I\) 38/2023 What is a BAS service?](#).

¹⁰ Page 8 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

¹¹ Page 1 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

What is a 'conflict of interest'?

22. A conflict of interest is where a registered tax practitioner has a personal interest or has a duty to another person which is in conflict with the duty owed to the Australian government agency.
23. A conflict of interest may be direct or indirect, and real or apparent (or perceived). Also, it can arise before the registered tax practitioner accepts an engagement or at any time during the engagement.
24. A real conflict of interest arises where a registered tax practitioner has multiple competing interests and cannot objectively and impartially act in one of the interests.
25. An apparent conflict of interest arises where a registered tax practitioner has multiple interests, and the nature of those interests are such that they give rise to a reasonable perception by the public that one interest could possibly impact the motivation to act for another interest. Put another way, an apparent conflict of interest arises if a fair-minded lay observer might reasonably apprehend that the tax practitioner might not bring an impartial mind to the activities they are engaged to undertake for the Australian government agency.¹²

When is a conflict of interest 'material'?

26. The TASA and TASR do not provide any guidance on when a conflict of interest will be 'material'. Similarly, the Determination does not define the term 'material' in the context of conflicts of interest. However, it does provide some guidance by way of examples that distinguish between a conflict that is 'material' and one that is not material.¹³
27. The Macquarie Dictionary¹⁴ relevantly defines 'material' in the following way:
 - adjective: of substantial import or much consequence
 - phrase: material to, pertinent or essential to.
28. The TPB considers that the test of whether a conflict of interest is 'material' will depend on the facts and circumstances and whether a reasonable person, having the knowledge, skill and experience of a registered tax practitioner, would expect it to be of substantial import, effect or consequence to the other entity.

¹² *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337 at [6].

¹³ See page 9 of the Explanatory Statement to Tax Agent Services (Code of Professional Conduct) Determination 2024.

¹⁴ The Macquarie Dictionary, Macmillian Publishers Australia, 2023.

29. This requires the tax practitioner to exercise their professional judgement, taking into account the facts and circumstances surrounding the activities they are undertaking for the government agency, including:
- the information known to the tax practitioner about the activities, and
 - the consequences for the government agency if the tax practitioner's personal interest is such that it could give rise to a real or apparent conflict of interest that could affect their ability to discharge their duties and/or obligations to the government agency.
30. A material conflict of interest may arise in circumstances that include, but are not limited to – where a registered tax practitioner:
- is engaged by a government agency to consult on proposed Government law reform that impacts clients of the registered tax practitioner such that it may result in a potential or perceived benefit or gain to the registered tax practitioner and/or their clients
 - may benefit or gain financially from their engagement with the government agency directly or indirectly (this could include a benefit to the registered tax practitioner themselves, their employer, client and/or other associate)
 - misuses confidential information obtained in dealings with Government in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner
 - interferes in Government decision making in circumstances where this conduct may result in a potential or perceived benefit or gain to the registered tax practitioner.

What are 'reasonable steps to identify and document any material conflict of interest'?

31. The first element of the obligation under section 20 of the Determination requires that a registered tax practitioner take reasonable steps to identify and document any material conflict of interest (whether real or apparent) in connection with an activity undertaken for the Australian government agency in the registered tax practitioner's professional capacity. This requires the registered tax practitioner to actively turn their mind to whether a conflict of interest exists.
32. Registered tax practitioners should keep adequate records of any material conflict of interest identified in connection with an activity undertaken for an Australian government agency.

33. The TASA and the Determination do not provide guidance on the specific steps that a registered tax practitioner should take to document a material conflict of interest.
34. In these circumstances, the TPB expects that registered tax practitioners record the conflict of interest as soon as possible and practicable after the conflict of interest is identified. The record should contain sufficient details of the conflict of interest, including details of the materiality of the conflict.¹⁵ For more information on the details that a practitioner should record or document, see paragraph 41 below.
35. A determination of whether the registered tax practitioner has taken *reasonable steps* to identify and document a material conflict of interest will be a question of fact having regard to the particular circumstances of the matter in question.¹⁶
36. Relevant factors in making a determination as to whether a practitioner has taken reasonable steps to identify and document any material conflict of interest may include the following:
- the size of the tax practitioner entity
 - the type of work undertaken by the tax practitioner
 - the client base of the tax practitioner
 - the likelihood of conflicts of interest arising
 - the sensitive nature of the activities undertaken for the government agency
 - any possible adverse consequences for the government agency should a conflict of interest arise
 - whether the tax practitioner has provided training to staff on identifying, disclosing and documenting conflicts of interest
 - whether the tax practitioner has established procedures for the disclosure and record-keeping of potential conflicts of interest
 - whether the tax practitioner has established procedures for identifying and documenting conflicts of interest, which could include:
 - preliminary conflict checks prior to accepting clients or allocating staff to projects

¹⁵ Registered tax practitioners should also consider whether the existence of a material conflict of interest gives rise to any obligations they may have under the new breach reporting requirements and the non-compliance with laws and regulations (NoCLAR) framework. For more information on the breach reporting requirements and the consequences for not reporting, see paragraphs 109 to 112.

¹⁶ See, for example, *ASIC v Citigroup Global Markets Australia Pty Ltd* (ACN 113 114 832) (No. 4) [2007] FCA 963.

- maintaining, and periodically reviewing, a conflict of interest register
- information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

Disclose details of any material conflict of interest as soon as you become aware of the conflict

37. The second element of the obligation under section 20 of the Determination requires that a registered tax practitioner disclose the details of any material conflict of interest (real or apparent) that arises in connection with an activity undertaken for the agency to the agency as soon as the tax practitioner becomes aware of the conflict.
38. The obligation to disclose a conflict of interest is not limited to a tax practitioner disclosing information about their own material conflicts of interest. It extends to *any* material conflict of interest that they are aware of that arises in connection with *any* activity undertaken for the agency (whether the same or different activity) or in relation to *any* activity undertaken for another government agency. This may include any conflict of interest of any employee, associate, contractor or other relevant entity.
39. For example, where a tax practitioner is undertaking an activity for an agency in their professional capacity and knows of another person's or entity's conflict of interest in undertaking the same or a different activity for that agency, section 20 of the Determination imposes an obligation on the tax practitioner to disclose the details of that conflict of interest to the agency.
40. The material conflict of interest must be disclosed as soon as the tax practitioner becomes aware of the conflict.

What details need to be disclosed to the agency

41. Details to disclose to the government agency may include, but are not limited to, the following:
- the nature of the conflict
 - the extent of the conflict
 - what interest, association or incentive gives rise to the conflict
 - the identity of the registered tax practitioners or others related to the conflict and the extent to which they have been involved in the services provided to the government agency

- when the conflict was first identified
- how the advice or services provided to the government agency might have been different had there not been a conflict of interest
- any benefit, financial or otherwise, obtained due to the conflict of interest
- whether any actions have been taken or are proposed to avoid the conflict or to mitigate any damage arising from the conflict.

42. The disclosure should:

- be made at the earliest possible opportunity after becoming aware of the material conflict of interest
- be specific and meaningful to the Australian government agency
- occur before or when the relevant activities undertaken for the Australian government agency occur, but in any case, at a time that allows the government agency a reasonable time to assess the effect of the conflict of interest
- refer to the specific activities to which the conflict relates.

43. The form of the disclosure must be sufficient to allow the government agency to make an informed decision about how the conflict may affect the activities the registered tax practitioner is engaged in and the management of those activities. The government agency will then determine whether, and to what extent, the registered tax practitioner can continue to engage in those activities.

44. Where a registered tax practitioner is unsure as to whether a conflict of interest arises or whether the conflict is material or not, the tax practitioner should err on the side of caution and disclose the details of the potential conflict of interest to the relevant government agency.

What are 'reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest'?

45. The third element of the obligation under section 20 of the Determination requires a registered tax practitioner to take reasonable steps to manage, mitigate, and where appropriate and possible avoid, any material conflict of interest that arises in connection with an activity undertaken for an Australian government agency (except to the extent that the agency has expressly agreed otherwise).

46. A determination of whether the conflict management arrangements employed by a registered tax practitioner are sufficiently adequate to meet the obligation under section 20 of the Determination will be a question of fact having regard to the particular circumstances.
47. A number of mechanisms could be used to manage, mitigate, and avoid a conflict of interest. It will be up to the registered tax practitioner to exercise their professional judgement to determine the most appropriate method to meet the obligation under section 20 of the Determination.

Managing and mitigating a conflict of interest

48. Section 20 of the Determination requires registered tax practitioners to take reasonable steps to manage and mitigate any material conflict of interest that they have identified in connection with an activity undertaken for an Australian government agency in their professional capacity.
49. The Macquarie Dictionary relevantly defines 'manage' in the following way:
 - to take charge or care of;
 - to handle, direct, govern, or control in action or use.
50. Further, the Macquarie Dictionary relevantly defines 'mitigate' in the following way:
 - to moderate the severity of.
51. Reasonable steps to manage and mitigate a conflict of interest may require a registered tax to:
 - assess and evaluate the conflict of interest
 - implement appropriate mechanisms to manage or control the impact of the conflict of interest on the tax practitioner's advice or decisions, or the decisions of the government agency
 - implement appropriate mechanisms to mitigate the conflict of interest.
52. What is reasonable in the circumstances will be a case-by-case decision involving consideration of a number of factors, including:
 - the size of the tax practitioner entity
 - the type of work undertaken by the tax practitioner
 - the likelihood of conflicts of interest arising.

53. Examples of reasonable steps include, but are not limited to, the following:

- enforcing procedures for managing, mitigating, and avoiding conflicts of interest
- allocating staff to projects in a way that manages or avoids potential conflicts of interest, for example, by not allocating staff with conflicts to certain projects or tasks, or by allocating staff with conflicts of interest to work on initial identification and analysis of issues but having staff without conflicts of interest reviewing that analysis and making final decisions
- having internal governance policies in relation to conflicts of interest that include consequences for failing to comply with those procedures
- maintaining a conflict of interest register and information handling procedures that utilise technology to limit information access to those with a legitimate need to know.

54. Additional techniques that may assist a registered tax practitioner to manage and mitigate conflicts of interest may include:

- placing a positive onus on employees or anyone else providing relevant services on behalf of the registered tax practitioner in relation to the activities undertaken for the Australian government agency to declare conflicts of interest, including reporting to appropriate people, and signing relevant declarations as appropriate
- developing a register of private interests (in conjunction with appropriate protocols) and regularly revising the register
- reviewing conflict of interest declarations periodically
- relevant training, including to employees or anyone else providing relevant services on behalf of the registered tax practitioner in relation to the activities undertaken for the Australian government agency, to ensure appropriate awareness and understanding of what constitutes a conflict of interest and how to act in accordance with relevant internal procedures and protocols (including, for example escalation procedures)
- seeking advice from an independent third party, which may include legal advice.¹⁷

¹⁷ See, for examples, APES 110 Code of Ethics for Professional Accountants, sections 220 and 310 on the Accounting and Professional & Ethical Standards Board website at www.apesb.org.au.

Avoiding a conflict of interest

55. Section 20 of the Determination requires registered tax practitioners, where appropriate and possible, to avoid any material conflict of interest that they have identified in connection with an activity undertaken, or due to be undertaken, for an Australian government agency, except to the extent that the government agency has expressly provided otherwise.
56. A number of mechanisms may be adopted to avoid a conflict of interest, such as those described at paragraphs 53 and 54 above. Registered tax practitioners should exercise their professional judgement to determine the most appropriate method to avoid a conflict of interest.
57. In some cases, regardless of arrangements put in place, conflicts will be unmanageable and the only way to adequately manage the conflict will be to avoid it altogether. This will generally require the registered tax practitioner to decline the engagement. Otherwise, the continued engagement by the government agency of the practitioner will be at the discretion of the agency having regard to the nature of the conflict and any steps taken by the practitioner to manage or mitigate the conflict.

Continued engagement at the discretion of the Australian government agency

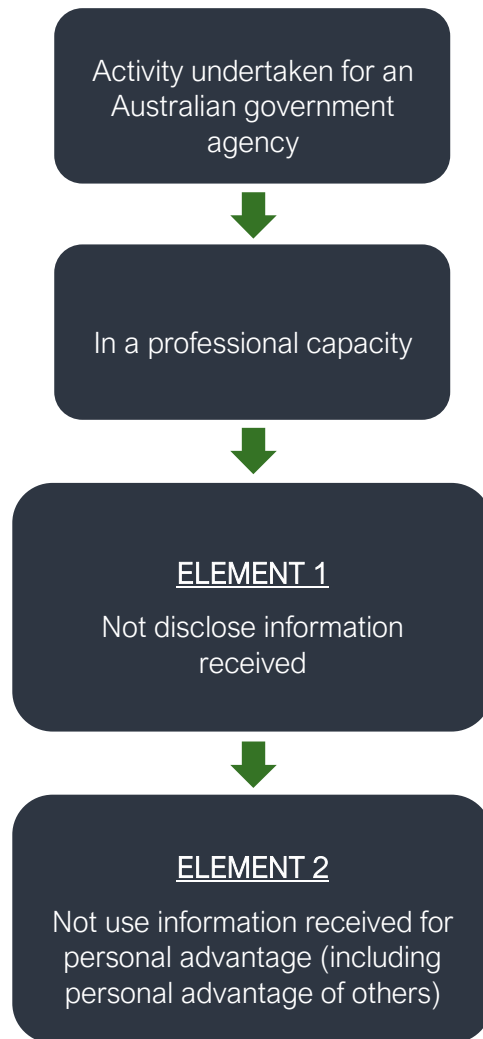
58. Once a conflict of interest is disclosed to the Australian government agency, the continued engagement of the registered tax practitioner will be at the discretion of the Australian government agency.
59. An assessment of whether to continue with the engagement may consider factors such as:
 - the nature and extent of the conflict of interest
 - steps taken by the tax practitioner to manage the conflict of interest
 - any mitigating actions taken by the tax practitioner
 - the sensitive nature of the activities undertaken for the Australian government agency
 - the damage, financial or otherwise, that may result should the engagement continue
 - whether there are opportunities to obtain information and/or services relevant to the activities undertaken by the Australian government agency from an entity that does not have a conflict

- the extent to which the risks arising from the conflict can be appropriately managed
- whether the risk of accepting the conflict outweighs the risk of not obtaining the necessary information and/or services relevant to the activities undertaken by the Australian government agency.

60. The discretion recognises that there may be circumstances where the only way the government agency can obtain relevant and necessary expertise is from a tax practitioner that has a conflict of interest.

61. In these circumstances, the government agency may provide express consent to accept a conflict of interest. Where express consent is provided, the conflict of interest must be managed in a way that is consistent with that express consent. It must also be managed in a way that is consistent with the obligation in section 25 of the Determination.

What is the obligation under section 25?



62. Section 25 of the Determination gives rise to two obligations in relation to maintaining confidentiality in dealings with Australian government agencies:
- a. subject to some exceptions (see paragraphs 81 to 93), *not disclose any* information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken for that agency in an entity's professional capacity, and
 - b. subject to some exceptions (see paragraphs 103 to 107), *not use any* information received, directly or indirectly, from an Australian government agency in connection with any activities undertaken for that agency in an entity's professional capacity, for the registered tax practitioner's personal advantage, or for the advantage of an associate employee, employer or client of the tax practitioner.

63. The obligation is intended to protect against the unauthorised disclosure and improper use by registered tax practitioners of information they obtain in relation to activities they undertake for an Australian government agency.

Activities undertaken for an Australian government agency in your professional capacity

64. Like the obligation under section 20 of the Determination, the obligations under section 25 apply to activities undertaken by a registered tax practitioner for an Australian government agency in the practitioner's professional capacity, whether paid or otherwise.

65. For more information in relation to activities undertaken for an Australian government agency in a tax practitioner's professional capacity, see paragraphs 15 to 21 above.

Obligation to not disclose information

66. Subsection 25(1) of the Determination prohibits registered tax practitioners from disclosing information they receive (directly or indirectly) from an Australian government agency in connection with activities they undertake for the government agency in their professional capacity, unless there is a legal duty to do so or to the extent that the following apply:

- a. it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency for further disclosure, and
- b. any further disclosure of the information was done consistently with the agency's authorisation.

67. For example, these requirements may limit authorised disclosure of government information to certain tax practitioners or individuals within an entity, rather than the entity as a whole.¹⁸

68. The obligation is not intended to apply to information released by the government agency to the general public (either published on a publicly available government website or through the media), nor does it extend to activities or interactions of a personal nature.¹⁹

69. The key concepts of this obligation are explained further below.

¹⁸ Ibid, page 11.

¹⁹ Page 10 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

What is 'information'?

70. 'Information' refers to the acquiring or deriving of knowledge obtained in connection with activities undertaken for an Australian government agency by a registered tax practitioner in their professional capacity. This information could be acquired either directly or indirectly from the government agency or other sources.
71. Examples of information that may be received from an Australian government agency include the following:
- proposed government reform, including potential legislative changes
 - information about procurement processes, including tender or pricing information, an agency's project budget, pre-tender estimates, or evaluation methodologies
 - personal information about entities
 - cabinet in-confidence documents or market sensitive information.

What is a third party?

72. The obligation under section 25 will apply to any disclosure to a 'third party'.
73. A third party means any entity other than the registered tax practitioner and the government agency.
74. In relation to a registered tax practitioner that outsources a component of the tax agent services to another entity (for example, another registered tax practitioner, a legal practitioner, a contractor, or an overseas or offshore entity), the third party would include that other entity.
75. Further, a third party may also include entities that maintain offsite data storage systems (including unencrypted 'cloud storage').
76. In the case of a tax agent with a tax (financial) advice services condition that is an authorised representative of an Australian financial services (AFS) licensee, a third party includes the AFS licensee, and vice versa.
77. Subject to the relevant contractual arrangements, a third party may also include other AFS licensees, authorised representatives, para-planners, product providers and advisers, insurance brokers, and technical teams and advisers.

In what circumstances can a tax practitioner disclose information to a third party?

78. A registered tax practitioner may only disclose information received in connection with activities undertaken for an Australian government agency if:
- a. it is reasonable to conclude that the further disclosure of the information received from the Australian government agency was authorised by that agency and the further disclosure was done consistently with the agency's authorisation, or
 - b. there is a legal duty to do so.
79. This ensures that government agencies can establish the limits on with who and how the information may be shared.
80. Subsection 25(1) of the Determination complements section 20 in circumstances where the disclosure is authorised to certain registered tax practitioners with a need to know the information, and not authorised to be disclosed to people who may have a material conflict of interest. For example, these requirements may limit authorised disclosure of government information to certain tax practitioners or individuals within an entity, rather than the entirety of an entity.²⁰

Reasonable to conclude further disclosure of information was authorised by Australian government agency

81. Where it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency for further disclosure, and the further disclosure of the information was done consistently with that authorisation, the tax practitioner will not fall foul of the obligation in subsection 25(1) of the Determination.
82. Applying this standard, if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the further disclosure of the information was authorised by the government agency, this will be sufficient. It is not necessary to determine the question with any certainty. For example, it would be reasonable to conclude that further disclosure of the information was authorised by the Australian government agency in the following circumstances:
- the further disclosure was expressly authorised by the government agency, either in writing or otherwise (for example, the formal engagement letter included a clause authorising the disclosure of information), or
 - authorisation of the further disclosure was implied by the government agency, either in writing or otherwise.

²⁰ Page 11 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

83. Other relevant factors in determining whether it is reasonable to conclude that further disclosure of the information was authorised by the Australian government agency may include the following:
- comments made by the government agency when providing the information to the tax practitioner, or
 - the availability of the information provided to the tax practitioner from other sources.
84. Ultimately, the tax practitioner should use their professional judgment to assess whether the further disclosure of the information by the tax practitioner was authorised, having regard to the circumstances.
85. There is no requirement that the information be marked as confidential or identified as for limited distribution although this may be a relevant factor in interpreting whether it is reasonable to conclude that further disclosure of the information is authorised by the government agency.
86. Where a registered tax practitioner intends to disclose, to a third party, information received from an Australian government agency in connection with any activities undertaken for the government agency, the TPB recommends that the registered tax practitioner should, prior to any disclosure, clearly inform the government agency that there will be such a disclosure and obtain the government agency's permission. This permission may be by way of a signed letter outlining the information that is to be disclosed and to whom the information is to be disclosed to, signed consent or other communication with the government agency. In all cases, the relevant communication should outline the disclosures to be made, as well as information about the entity/entities that will have access to the information disclosed.
87. While there is no set formula or methodology used to obtain the Australian government agency's permission, the TPB suggests that registered tax practitioners be clear in explaining to the government agency where information may be disclosed (including, among other things, where a component of the activity or add-on activity will be completed). For example, to avoid any likelihood of a registered tax practitioner's practices being seen as misleading, the TPB suggests that tax practitioners do not imply or state that all activities undertaken for the government agency will be completed in Australia, if that is not the case.
88. In relation to outsourcing arrangements and cloud storage arrangements, the TASA does not specifically prohibit these activities. However, tax practitioners must consider their obligations under section 25 of the Determination in relation to these arrangements to ensure confidentiality of information received from an Australian government agency in connection with any activities undertaken for the government agency, including appropriate disclosure in regard to where data is being sent and stored.²¹

²¹ See also TPB Practice Note [TPB\(PN\) 1/2017 Cloud computing and the Code of Professional Conduct](#).

89. While not binding on all registered tax practitioners, further useful guidance on what steps a tax practitioner may take when providing or utilising outsourced services may be found in specific APESB guidance.²² It is also noted that TPB accredited recognised professional associations may be able to assist in providing practical guidance, while recognising that there is not a default one-size-fits-all template and that arrangements will need to be mindful of the particular circumstances.²³

Legal duty to do so

90. A registered tax practitioner may disclose information in connection with activities they undertake for an Australian government agency to a third party without the government agency's agreement if the tax practitioner has a legal duty to disclose the information.

91. Examples of circumstances where a registered tax practitioner may have a legal duty to disclose such information to a third party include:

- providing information requested by the TPB in undertaking enquiries about the registered tax practitioner's conduct, including information requested under a notice issued pursuant to section 60-100 of the TASA
- providing information to the TPB under the breach reporting obligations in sections 30-35 and 30-40 of the TASA
- providing information to a court or tribunal pursuant to a direction, order, or other court process to provide that information
- providing information to AUSTRAC in accordance with reporting obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)²⁴
- providing information or documents to the Australian Taxation Office (ATO) under a notice pursuant to section 353-10 in Schedule 1 to the *Taxation Administration Act 1953* concerning taxation laws
- providing information to an AFS licensee pursuant to section 912G of the Corporations Act, as inserted by ASIC Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*, which requires an authorised representative of an AFS licensee

²² See, in particular, [APES Guidance Note GN 30 – Outsourced Services](#). This guidance note applies to members of relevant professional bodies that have adopted it.

²³ See also TPB Practice Note [TPB\(PN\) 2/2018 Outsourcing and offshoring of tax services – Code of Professional Conduct considerations](#).

²⁴ The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) imposes transaction and compliance reporting obligations on reporting entities when they provide designated services; the requirements set rules with respect to customer due diligence, identification, record keeping and reporting. For further information on complying with obligations under the AML/CTF Act, refer to the [AUSTRAC compliance guide](#) (Chapter 7 provides an overview of the AML/CTF Act reporting obligations) available at austrac.gov.au

to give records to the AFS licensee if requested by the AFS licensee, provided the request is made:

- o in connection with the obligations imposed on the AFS licensee under Chapter 7 of the Corporations Act; and
- o within seven years after the day on which the personal advice was provided to the client.

92. The TASA, including section 25 of the Determination, does not affect the law relating to legal professional privilege (LPP).²⁵ LPP protects confidential communications between a lawyer and their client from compulsory production. At times, a registered tax practitioner may be in possession of client documents or information that may be subject to LPP, such as legal advice about a client's tax affairs which has been provided on a confidential basis. Before disclosing client documents or information to a third party, a tax practitioner should consider whether any of the documents may be subject to LPP. Where a tax practitioner considers that LPP may apply, they should seek legal advice as to the application of LPP. Accordingly, in the practical examples given in paragraph 123 below, a tax practitioner would need to consider any additional LPP obligations.

93. If a registered tax practitioner is concerned as to whether there is a legal duty to disclose information received in connection with any activities they undertake with the Australian government agency to a third party, the tax practitioner should consider seeking independent legal advice.

Inadvertent disclosure

94. Registered tax practitioners also need to ensure they have appropriate arrangements to prevent inadvertent disclosure.²⁶ In this regard, the following are some examples of where tax practitioners need to be particularly mindful of their obligations:

- leaving information in unsecured locations which may be accessed by third parties
- disposing (such as trading in or selling to a second-hand market) of IT equipment or mobile devices that contain / store data that may be accessible by third parties
- the use of shredding and data disposal services

²⁵ See section 70-50 of the *Tax Agent Services Act 2009*.

²⁶ The term 'appropriate arrangements' is consistent with the OAIC's APP 11 which states that an entity must take reasonable steps to protect personal information from unauthorised disclosure: see [Chapter 11: APP 11 — Security of personal information - Home \(oaic.gov.au\)](#).

- the use of external service providers which may include, for example, IT consultants, virtual assistants, and cleaners
- the use of virtual meetings to discuss information when third parties may be in attendance
- the use of public Wi-Fi or unsecure network when providing services for a government agency
- the use of unencrypted cloud storage.

Other considerations – Privacy

95. In addition to a tax practitioner’s obligations under subsection 25(1) of the Determination, the *Privacy Act 1988* (Cth) (Privacy Act) sets out a number of Australian Privacy Principles (APP) which govern the use of, storage and disclosure of personal information and other conduct by organisations.²⁷ Some of these privacy principles may be relevant to the obligation under subsection 25(1) of the Determination. For example, APP6 outlines the circumstances in which an APP entity²⁸ may use or disclose personal information that it holds. Further, APP11 states that an APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure.
96. Tax practitioners should seek their own advice about whether the provisions of the Privacy Act apply to them. Information about obligations under the Privacy Act is accessible from the Office of the Australian Information Commissioner’s website at www.oaic.gov.au.

Obligation to not use information for personal advantage

97. Subsection 25(2) of the Determination prohibits registered tax practitioners from using information they receive (directly or indirectly) from an Australian government agency in connection with activities they undertake for the government agency in a professional capacity, in a way that may provide a personal advantage, except to the extent the following apply:
- a. it is reasonable to conclude that the information received from the Australian government agency was authorised by that agency to be used in a way that may provide for such a personal advantage, and

²⁷ ‘Organisation’ is defined in section 6C of the *Privacy Act 1988* and excludes certain small business and small business operations; see further section 6D of the *Privacy Act 1988*.

²⁸ ‘APP entity’ is defined at paragraph B.2 of The Australian Privacy Principles guidelines to be an agency or organisation. ‘Organisation’ is defined at paragraph B.3 to be an individual (including a sole trader), a body corporate, a partnership, any other unincorporated association, or a trust.

- b. any further use of the information was done consistently with the agency's authorisation.

What is a personal advantage?

- 98. 'Personal advantage' is not defined in the TASA.
- 99. The TPB is of the view that a personal advantage refers to interests that involve potential gain, financial or otherwise, for the registered tax practitioner. It may also be direct or indirect.
- 100. It is not necessary that the use of the information was likely or guaranteed to result in a personal advantage.²⁹ The mere possibility that the information has the potential to result in a personal advantage is enough to trigger the obligation.
- 101. The obligation imposes a strict restriction on registered tax practitioners to ensure that no personal advantage is taken from using information obtained from government agencies in relation to activities undertaken for that agency, except where it is reasonable to conclude that the agency authorised this use.³⁰
- 102. Subsection 25(2) of the Determination extends the obligation further to include the use of that information for the personal advantage of an associate, employee, employer, or client. This ensures that any potential indirect benefits do not flow to the registered tax practitioner through the unauthorised disclosure of such information for the personal advantage of others.

In what circumstances can a tax practitioner use information for personal advantage?

- 103. A registered tax practitioner may only use information received in connection with activities undertaken for an Australian government agency for the tax practitioner's personal advantage, or the advantage of an associate, employee, employer (which may include the recognised professional association of the tax practitioner), or client, if:
 - a. it is reasonable to conclude that the use of the information received from the government agency was authorised by that agency to be used in a way that may provide such a personal advantage, and
 - b. any further use of the information was done consistently with the agency's authorisation.

²⁹ Page 11 of Explanatory Statement to the Tax Agent Services (Code of Professional Conduct) Determination 2023.

³⁰ Ibid.

104. A registered tax practitioner must satisfy both parts of paragraph 103 above to be able to use the information for their personal advantage, or the advantage of an associate, employee, employer, or client.
105. Applying this standard, if a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would conclude that the use of the information for such purpose was authorised by the Australian government agency, this will be sufficient. It is not necessary to determine the question with any certainty, although it is recommended that tax practitioners seek consent if in any doubt.
106. Ultimately, the tax practitioner should use their professional judgment to assess whether the use of the information for the tax practitioner's personal advantage, or the advantage of others, was authorised, having regard to the circumstances.
107. In determining whether it is reasonable to conclude that the Australian government agency authorised the use of the information for the personal advantage of the registered tax practitioner, or for the advantage of an associate, employee, employer or client, the following factors may be relevant:
- the use of the information for the personal advantage of the registered tax practitioner (or others) was expressly authorised by the government agency, either in writing or otherwise (for example, the formal engagement letter included a clause authorising the information to be used in such a manner), or
 - the use of the information for the personal advantage of the registered tax practitioner (or others) was implied by the government agency, either in writing or otherwise.

Consequences for failing to comply under the TASA

108. A breach of any of the requirements in the Determination, including sections 20 and 25, will constitute a breach of subsection 30-10(17) of Code in the TASA.
109. From 1 July 2024, registered tax practitioners will be required to notify:
- the TPB if they have reasonable grounds to believe that they have breached the Code and that breach is significant, and
 - the TPB and the relevant recognised professional association (if applicable) if they have reasonable grounds to believe that another registered tax practitioner has breached the Code and that breach is significant.³¹

³¹ For more information on the new breach reporting obligations, including consequences for failing to comply, see draft TPB Information Sheet (TPB(I) D53/2024 Breach reporting under the *Tax Agent Services Act 2009*.

110. In relation to the reporting of a significant breach relating to another registered tax practitioner's conduct, particularly in the context of disclosing the details of another person's or entity's conflict of interest in undertaking the same or different activity for an Australian government agency, the TPB will assess the information provided and make further enquiries (as appropriate) to ensure the reporting of a significant breach is not frivolous, vexatious or malicious.
111. The TPB may take action against the notifying registered tax practitioner if the TPB considers that a breach report is frivolous, vexatious or malicious, for example, if the claim involves the making of a false or misleading statement. Such situations may raise issues about the notifying registered tax practitioner's compliance with other requirements of the TASA, including:
- the fit and proper person requirement, which registered tax practitioners must meet to maintain their registration, and
 - other Code items, including the requirement to act with honesty and integrity (Code item 2), which may lead to the imposition of administrative sanctions.
112. If the TPB finds that a registered tax practitioner has breached the Code, the TPB may impose one or more of the following sanctions:
- a written caution
 - an order requiring the registered tax practitioner to do something specified in the order
 - suspension of the registered tax practitioner's registration
 - termination of the registered tax practitioner's registration (including a period within which the terminated tax practitioner may not re-apply for registration).
113. In addition, the same conduct which may constitute a failure to comply with sections 20 and 25 of the Determination could also constitute a breach of another Code obligation (such as the obligation to act with honesty and integrity).
114. Further, if the TPB finds that a registered tax practitioner has failed to meet an ongoing tax practitioner registration requirement (for example, by no longer being a fit and proper person), the TPB may terminate the tax practitioner's registration.
115. Ultimately, determining whether a registered tax practitioner has contravened the TASA will be a question of fact. This means that each situation will need to be considered on a case-by-case basis having regard to the particular facts and circumstances of that case.

Comparison with the *Corporations Act 2001* (Cth) for tax agents with a tax (financial) advice services condition

116. The TPB recognises that the obligations of some Australian financial services (AFS) licensees and their representatives under the *Corporations Act 2001* (Cth) (Corporations Act) are similar to some obligations under the TASA.
117. Ultimately, while compliance with relevant Corporations Act and Australian Securities and Investments Commission (ASIC) requirements will be a relevant factor, it is not conclusive in relation to whether obligations under sections 20 and 25 of the Determination have been satisfied.
118. In particular, it is noted that paragraph 912A(1)(aa) of the Corporations Act provides that a financial services licensee must:
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative.
119. In addition, subsection 961B(1) of the Corporations Act requires that, in the provision of personal advice to a person as a retail client, the *provider* must act in the best interests of the client in relation to the advice (best interests duty).
120. Further, the best interests duty is supplemented by subsection 961J(1) of the Corporations Act which requires that if the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of the provider or their related parties (such as licensees, authorised representatives and associates), the provider must give priority to the client's interests when giving the advice (conflicts priority rule).³²
121. The primary distinction between the obligations under section 20 of the Determination as compared with the best interests duty / conflicts priority rule is that section 20 of the Determination requires that the registered tax practitioner identify and disclose certain matters in relation to material conflicts of interest, whether real or apparent. In comparison, the best interests duty / conflicts priority rule under the Corporations Act is more narrowly focused on how to deal with an actual conflict of interest.
122. Further, the best interests duty / conflicts priority rule under the Corporations Act merely requires that the client's interests be prioritised in the event of an actual conflict, whereas section 20 of the Determination is broader and requires that arrangements must be in place

³² Generally, compliance with the best interests duty under the Corporations Act is met by following the safe harbour steps set out in subsection 961B(2) of the Corporations Act. For further information, see ASIC Regulatory Guides RG 175: *Licensing: Financial product advisers - conduct and disclosure* and RG 244: *Giving information, general advice and scaled advice*.

in relation to material conflicts of interest, whether real or apparent, and if possible and appropriate, reasonable steps are to be taken to avoid the conflict of interest.³³

123. Another distinction between the obligation under section 20 of the Determination, and the best interests duty / conflicts priority rule is that section 20 applies broadly to any activities that a registered tax practitioner undertakes for an Australian government agency in their professional capacity. In comparison, the best interests duty / conflicts priority rule under the Corporations Act only applies to those providing personal advice to retail clients.

124. It is noted that if an AFS licensee or an authorised representative of an AFS licensee fails to comply with the Corporations Act (including the best interests duty), they may be liable for:

- a civil penalty³⁴ and / or
- an order for compensation for loss or damage suffered by the client.³⁵

³³ See also paragraphs 31 to 61 in this information sheet. In particular, a registered tax practitioner should use their professional judgment to determine the most appropriate method to identify, manage and mitigate a particular conflict.

³⁴ See sections 961K and 961Q of the Corporations Act.

³⁵ See section 961M of the Corporations Act.

Case studies – section 20 of the Determination

125. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 1 – Conflict of interest not disclosed to Australian Government agency

Situation

Ann is a registered tax agent and a tax partner at a large tax consulting firm. Ann is asked to participate in a confidential consultation led by an Australian government agency in relation to proposed draft legislation concerning new integrity measures that relate to the tax consolidation rules. If implemented, these rules would apply to clients of the large consulting firm, including Ann's own clients.

Upon receiving the confidential consultation papers, Ann identifies that if the new integrity measures took effect, they would adversely impact the tax affairs of some of her clients. Ann identified that her duty to her clients could be perceived as a material conflict of interest, noting that in the circumstances, there was a potential opportunity for her to financially benefit from her knowledge of those proposed new integrity measures by offering advice to those clients who would be impacted (and potentially new clients) on how they could restructure their affairs before the government agency published the draft legislation. She does not document this conflict of interest, nor disclose it to the government agency. She also takes no steps to manage, mitigate or avoid the conflict of interest, despite the existence of reasonable steps she could have taken to document the conflict of interest, or manage, mitigate, or avoid it.

Breach of section 20 of the Determination

Ann has breached her obligation under section 20 of the Determination.

Ann has identified a material conflict of interest in connection with the activities she is undertaking for the government agency and the duty she owes to the agency to maintain confidentiality. She has failed to document and disclose this conflict to the government agency. In addition, it cannot reasonably be concluded that the government agency expressly provided that Ann could continue to participate in the confidential consultation.

In breaching section 20 of the Determination, Ann is in breach of subsection 30-10(17) of the TASA for failing to document and disclose the conflict of interest to the government agency. Further, if Ann used the confidential information to financially benefit from her knowledge of the proposed new integrity measures, the TPB may also find that Ann is in breach of subsections 30-10(1) of the TASA (failing to act with honesty and integrity) and is no longer a fit and proper person to be registered as a tax practitioner.

Case study 2 – Agency authorises continued engagement following disclosure of conflict of interest

Situation

Max is a registered tax agent and a tax partner at a large accounting firm. Max's clients include several large corporations. Max is an expert in company tax law and is often engaged by his clients to advise on how they may lawfully arrange their tax affairs to reduce tax that they may otherwise be liable for. He also regularly lectures on this topic at several Australian universities and has published numerous peer-reviewed articles on the matter.

Due to his expertise in this field, Max is engaged by The Treasury to assist in the design of several company tax law reform measures.

Max immediately documents and discloses the conflict of interest to The Treasury, advising of the nature and extent of the conflict of interest, and provides a broad overview of the nature of the advice and services he provides to his clients. He discloses to The Treasury that his clients include several large corporations that may be adversely impacted by the proposed reform measures. Further, Max provides The Treasury with an overview of how he intends to manage and mitigate the conflict should the engagement continue, noting that his only option to avoid the conflict is to decline the engagement. He informs The Treasury that he has taken the following steps to manage and mitigate the conflict of interest:

- recorded the conflict of interest on the firm's conflict register,
- reviewed the firm's internal governance policies in relation to conflicts of interest, including the provisions concerning consequences for failing to comply with the procedures, to ensure compliance with those internal policies, and
- ensured that access to information concerning the reform measures is restricted to those who are also assisting in the design of the reform measures (assuming others are engaged to assist in the design of these reforms).

Following the disclosure of the conflict of interest, The Treasury decides to continue with the engagement, noting the mitigating actions taken by Max and Max's expertise in company tax law. The Treasury provides Max with its express written consent to continue with the engagement, providing Max implements appropriate mitigation measures and those measures continue to be consistent with the express consent throughout the engagement.

Conflict of interest

Max has met his obligation in section 20 of the Determination.

Max has appropriately identified, documented, and disclosed the material conflict of interest to The Treasury. He has also provided The Treasury with details of how he intends to

manage and mitigate the conflict of interest, noting that the conflict of interest may only be appropriately avoided if he declined the engagement with The Treasury.

In addition, throughout the engagement with The Treasury, Max at all times acts in a manner consistent with the express consent provided by The Treasury.

Case Study 3 – Conflict of interest considered not material

Situation

John is a registered tax practitioner and expert on the Australian superannuation laws. John is engaged by an Australian government agency to provide advice in relation to a proposed superannuation reform package aimed at improving the fairness, sustainability, flexibility and integrity of the superannuation system. The proposed reforms are intended to apply to all superannuation funds.

John is a passive member of 123 Super Fund. Although John identifies that there is a conflict of interest given he is a member of a superfund that will be impacted by the proposed reform package, he assesses this conflict as one that is not material in the circumstances. Nonetheless, John documents and discloses the conflict to the government agency.

Conflict of interest

John has met his obligation under section 20 of the Determination.

Although John has identified that the conflict of interest in connection with the activities he is undertaking for the government agency is not material, he has nonetheless documented and disclosed the conflict to the government agency.

Even if John had not disclosed the conflict to the government agency, he would not have breached section 20 of the Determination given the conflict was not material.

Case studies – section 25 of the Determination

126. These case studies provide general guidance only. In all cases, consideration will need to be given to the specific facts and circumstances.

Case study 4 – Agency authorises disclosure of information to third party practitioner

Situation

Thomas is a registered tax agent and a tax partner at a mid-sized accounting firm. Thomas is invited to a set of confidential round table discussions led by The Treasury in relation to a

proposed increase to tax rates that would largely impact high-wealth individuals. The proposed increase in the tax rates would impact a large portion of the firm's client base.

The invitation to participate in the round table discussions sets out the proposed terms of the engagement, including to whom information received in connection with any activities that Thomas is to undertake for The Treasury may be disclosed. The terms make it clear that a core group of expertise within the firm could be established to participate in the round table discussions and other dialogue in relation to the proposed tax-rate hike, but that the information could not be disseminated further.

Thomas asks two of the firm's partners to participate in the engagement and this is communicated to, and authorised by, The Treasury. Throughout the engagement, Thomas discloses information to the two partners and no further disclosure of the information occurs.

Is there a breach of subsection 25(1) of the Determination?

Thomas has not breached subsection 25(1) of the Determination.

It is reasonable to conclude that the information received in connection with the activities Thomas has undertaken for The Treasury was authorised by the department to be disclosed to the core group, noting in particular the proposed terms of engagement. In addition, Thomas and the core group did not disclose that information further.

Case study 5 – Agency authorises disclosure of information to third party practitioner, but disclosure is inconsistent with that authorisation

Situation

In Case Study 4, Thomas has been authorised to disclose certain information in relation to activities he is undertaking for The Treasury to a core group to be established within his firm. The authorisation provided to Thomas clearly states how that information is to be communicated to this core group, what information can be disseminated, what information is to remain strictly confidential and not for further dissemination to that core group, and for what purpose that information is to be used. Importantly, the authorisation clearly stipulates that any information shared with that core group is to be provided through email only (with a carbon copy (cc) to The Treasury) and not to be provided in printed form.

Thomas asked two of the firm's partners to participate in the engagement. Throughout the engagement, Thomas discloses information to the two partners. On several occasions, Thomas prints emails from The Treasury in relation to the confidential round table discussions, including confidential meeting papers, and provides those to the two partners.

Is there a breach of subsection 25(1) of the Determination?

Thomas has breached subsection 25(1) of the Determination.

It is not reasonable to conclude that the information received in connection with the activities Thomas has undertaken for The Treasury was authorised by the department to be disclosed to the core group in the manner in which it was disclosed, noting that the authorisation provided to Thomas by The Treasury clearly stipulated that information shared with the core group was to be shared through email only (with a cc to The Treasury).

In breaching subsection 25(1) of the Determination, Thomas is in breach of subsection 30-10(17) of the Code in the TASA for making disclosures of the confidential information in a manner that was not consistent with The Treasury's authorisation.

Case study 6 – Agency does not authorise disclosure of information to third party practitioner

Situation

Isabella is a registered tax agent and a tax partner at a large tax consulting firm. Isabella is asked to participate in a confidential consultation by The Treasury in relation to new measures aimed at improving the tax laws. This confidential consultation included new rules to stop multinationals avoiding tax by shifting profits from Australia to tax havens overseas.

The consultation papers distributed to Isabella were marked "under embargo". In addition, Isabella was asked to sign a confidentiality agreement as part of her formal engagement. The confidentiality agreement signed by her clearly stipulated that any information received, directly or indirectly, in connection with any activities undertaken for The Treasury in relation to these new measures, is not for further dissemination and that any further disclosure would require the prior authorisation of the government agency.

Throughout the engagement, Isabella made unauthorised disclosures of the confidential law reform to partners and staff within the consulting firm.

Is there a breach of subsection 25(1) of the Determination?

Isabella has breached her obligation under subsection 25(1) of the Determination.

Isabella has disclosed information she received from The Treasury in connection with activities she undertook for the department in her professional capacity. Further, it is not reasonable to conclude in the circumstances that the information received by Isabella was authorised by The Treasury for further disclosure.

In breaching subsection 25(1) of the Determination, Isabella is in breach of subsection 30-10(17) of the Code in the TASA for making unauthorised disclosures of the confidential information. Depending on the circumstances, the TPB may also find that Isabella is in breach of subsections 30-10(1) of the TASA (failing to act with honesty and integrity) and/or that she is no longer a fit and proper person to be registered as a tax practitioner.

Case study 7 – Agency does not authorise use of information for personal advantage

Situation

In Case study 6, during her engagement in the confidential consultation, Isabella became aware that clients of the firm would be impacted by the proposed new measures. Isabella chose to disclose the information received from The Treasury in connection with the activities she was undertaking for the department in her professional capacity for her personal advantage, noting that she stood to gain financially by disclosing the information to the partners of the firm whose clients would be impacted. Similarly, the partners, and others within the firm to whom the confidential information was also disclosed, would gain personally from the unauthorised disclosure, noting the financial benefit that would be gained by informing impacted clients prior to The Treasury publishing the draft legislation.

Is there a breach of subsection 25(2) of the Determination?

Isabella has breached her obligation under subsection 25(2) of the Determination.

In addition to the unauthorised disclosure of confidential information, Isabella has also used this information she received from The Treasury in connection with activities she undertook for The Treasury in her professional capacity for her personal advantage, and the personal advantage of others within the consulting firm. Further, it is not reasonable to conclude in the circumstances that the use of the information received by Isabella was authorised by The Treasury to be used in a way that may provide for such a personal advantage.

In breaching subsection 25(2) of the Determination, Isabella is in breach of subsection 30-10(17) of the TASA, for making unauthorised disclosures of the confidential information for her personal advantage. In the circumstances, it is possible that the TPB may also find that Isabella is in breach of subsections 30-10(1) of the Code in the TASA (failing to act with honesty and integrity) and/or that she is no longer a fit and proper person to be registered as a tax practitioner.

Case study 8 – Agency does not authorise use of information for personal advantage

Situation

Adam is a registered tax practitioner and is employed by a recognised professional association as head of its tax training program. This program is designed to equip graduates with specialist tax knowledge, and upon completion of the program, a tax specialist certification. Adam has extensive experience over several decades in designing and delivering the curriculum of the program. His area of expertise is the taxation of trusts.

Due to Adam's experience in developing tax training programs, particularly on the topic of taxation of trusts, Adam is engaged by The Treasury to assist in drafting a consultation paper on proposed reforms to the taxation of trust income.

Adam disclosed information in relation to the proposed reforms to the Chief Executive Officer (CEO) of the recognised professional association. He discussed his intention to commence work on developing a new training program that could be marketed and offered as soon as a public announcement was made on the proposed reforms. Both Adam and the recognised professional association stood to gain financially as a result of Adam's disclosure of the confidential information, noting that the recognised professional association would gain a competitive advantage by commencing work on and releasing the tax training program into the market before other competitors.

Is there a breach of subsection 25(2) of the Determination?

Adam has breached his obligation under subsection 25(2) of the Determination.

In addition to the unauthorised disclosure of confidential information, Adam has also used this information he received from The Treasury in connection with activities he undertook for The Treasury in his professional capacity for his personal advantage, and the personal advantage of his employer (the recognised professional association). Further, it is not reasonable to conclude in the circumstances that the use of the information received by Adam was authorised by The Treasury to be used in a way that may provide for such a personal advantage.

In breaching subsection 25(2) of the Determination, Adam is in breach of subsection 30-10(17) of the TASA, for making unauthorised disclosures of the confidential information for his personal advantage, and the personal advantage of his employer. In the circumstances, it is possible that the TPB may also find that Adam is in breach of subsections 30-10(1) of the Code in the TASA (failing to act with honesty and integrity) and/or that he is no longer a fit and proper person to be registered as a tax practitioner.